Canadian Environmental Assessment Agency
Agence canadienne d'évaluation environnementale

REVIEW OF THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT

A Discussion Paper for Public Consultation

Canada

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MESSAGE FROM THE MINISTER

I am pleased to invite and encourage you to participate in a review of the provisions and operation of the Canadian Environmental Assessment Act.

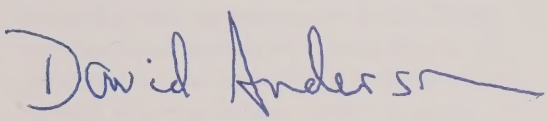
The Government of Canada is involved in a wide variety of projects as a developer, as a financial supporter, as a regulator, and as a custodian of public lands. The Act provides that the government consider the possible environmental effects of these projects before making its decisions.

Environmental assessment can enable better informed federal decisions, promote sustainable development, avoid significant adverse environmental effects within and outside Canada's borders, and provide for public participation in the planning of projects involving the federal government.

Many of our experiences in applying the Act have been positive. However, there have been challenges, particularly in the early years, in adjusting to a legislated environmental process. Now, five years after the Act came into force, the time has come to take a close, objective look at how well the Act has been working. The need for such a review is dictated by the Act, and must begin no later than January 2000.

In preparing for the Five Year Review, the Canadian Environmental Assessment Agency has consulted with and gathered information from a wide variety of sources including federal departments and agencies, provinces, Aboriginal peoples, environmental organizations and industry to benefit from their collective experience in implementing or participating in the environmental assessment process.

This discussion paper is intended to serve as the basis for a broad public consultation exercise that will begin in December 1999. All concerns and suggestions about the Act and its operation will be heard and considered. It is my intention to report to Parliament on the results of the review before the end of the year 2000.



David Anderson, P.C., M.P.

EXECUTIVE SUMMARY

FIVE YEARS AFTER THE COMING INTO FORCE OF THIS SECTION, A COMPREHENSIVE REVIEW OF THE PROVISIONS AND OPERATION OF THIS ACT SHALL BE UNDERTAKEN BY THE MINISTER.

s. 72(1), *CANADIAN ENVIRONMENTAL ASSESSMENT ACT*

This discussion paper provides background to the Five Year Review of the *Canadian Environmental Assessment Act*. It seeks to inform individuals, private sector companies, community and environmental organizations, other governments and Aboriginal organizations about the experience with the Act and to encourage a dialogue on possible improvements to the Act after five years of implementation.

THE ROLE OF ENVIRONMENTAL ASSESSMENT

In Canada, governments and other decision-making bodies share responsibility for environmental assessment. As a planning tool, environmental assessment has been applied in Canada for more than 25 years at both the federal and provincial government levels. Today, environmental assessment is recognized as an important tool in support of sustainable development, allowing decision makers to better integrate environmental, social and economic considerations into project and policy proposals.

SUMMARY OF ENVIRONMENTAL ASSESSMENTS

Of the nearly 25,000 environmental assessments conducted under the Act to date, more than 99 percent have involved the *screening* level of assessment. The type of project undergoing screening varies widely.

Over the past five years, the Canadian Environmental Assessment Agency has worked with federal departments and agencies to promote the *class screening* concept. So far, two model class screening reports have been declared by the Agency, while another 14 were in development as of mid-1999.

As of mid-1999, 46 proposed projects required a more thorough form of assessment called a *comprehensive study;* 23 of these studies were still under way as of mid-year.

Since the introduction of the Act, five projects have undergone full review by a panel, with another four panel reviews under way as of mid-1999. The majority of these reviews were performed co-operatively, either combining the federal process with that of a provincial jurisdiction, or by combining with another federal review process, such as that of the National Energy Board.

To date, a formal mediation process, as defined in the Act, has not been used in an environmental assessment.

BUILDING ON STRENGTHS

Efforts to strengthen and revitalize the Act can build on the important successes of the past five years. For example:

- The Act has helped achieve sustainable development through the promotion of sound economic development while reducing adverse effects on our environment.
- The Act has helped provide concerned individuals and organizations with opportunities to influence decisions on projects that will affect them.
- The Act has promoted the concept of "one project – one assessment" by encouraging co-operation among departments and other jurisdictions to reduce unproductive overlap and duplication.
- Under the principle of self-assessment, the environment has become the responsibility of every department in the federal government.

Challenge 1: Making the process more predictable, consistent and timely

Experience with the Act's operations over the past five years raises questions about the predictability, consistency and timeliness of the federal process. Introducing greater certainty, consistency and timeliness could result in

savings in cost and time to industry, government and other stakeholders; reductions in the likelihood of litigation; and an improved climate for private sector investment.

Opportunities for addressing this challenge are explored in the areas of: improvements in co-ordination and harmonization; assessment of smaller, routine projects; provisions of the Act affecting the timing of environmental assessments; issues related to scoping; the application of the Act to projects outside Canada; and the discretionary powers of the Minister of the Environment.

Ideas for consideration focus around amendments to the Act, such as: adding the concept of "lead responsible authority" to improve co-ordination; streamlining procedures to reduce the need to assess many small, routine projects; better promotion of environmental assessment as a planning tool; and amending the Act to extend coverage and to provide the Minister with greater flexibility in determining next steps in the process.

Challenge 2: Improving the Quality of Environmental Assessments

Better quality environmental assessments can mean better decisions and greater confidence in those decisions. Questions about the roles, responsibilities and accountability in the current federal process have undermined both the quality of assessments and the overall sense of trust and confidence in decisions arising from that process. This review considers these concerns in more detail in the areas of coverage of the Act, cumulative effects, follow-up and monitoring.

In addressing this challenge, ideas that could be considered in the Five Year Review include the establishment of a quality assurance program across federal departments, developing guidelines and training to provide clearer direction and strengthening provisions in the Act for follow-up to improve the quality of environmental assessments.

Challenge 3: Strengthening opportunities for public participation

Public participation remains a fundamental objective of the Act, but there have been challenges in putting that goal into practice. Strengthening opportunities for public participation can lead to important benefits for all participants in the process.

Concerns have been expressed about the scope and timing of opportunities for early, meaningful public participation in screenings and comprehensive studies; the application of more judicial, adversarial procedures in joint panel reviews; the involvement of Aboriginal people in environmental assessments; and the lack of a reliable, user-friendly system to ensure public access to up-to-date, useful information on environmental assessments.

In responding to this challenge, ideas that could be considered in the Five Year Review include amending the Act to provide improved opportunities for public participation and stronger obligations for federal departments to provide access to information; and encouraging greater participation by Aboriginal people through more appropriate consultation methods and by harmonizing the Act with processes established by self-government and land claim regimes.

LOOKING AHEAD: SIMPLICITY, QUALITY AND INTEGRITY

The current Act appears complex. A less ambiguous, more straightforward process could promote public confidence in the process, provide a greater measure of certainty and predictability to the private sector, and ensure a more appropriate use of scarce resources by the public sector.

Simplicity, quality, integrity: achieving this vision for a revitalized federal environmental assessment process will not be easy. It will not only be a matter of rewriting particular provisions of the federal legislation. It also must be based on a renewed commitment to co-operation and co-ordination within and across all jurisdictions, on changes in internal procedures by federal departments to better realize the potential of environmental assessment to contribute to sound planning decisions, and on the gradual expansion of expertise and capacity among environmental assessment practitioners in Canada through better training and education.

How to participate in the Five Year Review

The Five Year Review will allow individuals and organizations to have a say in the future of the Act.

The review begins in December 1999. Consultations across the country in January to March 2000 will give stakeholders an opportunity to provide feedback to the Minister on the operation and provisions of the Act, and to make suggestions for improvements. These consultations will involve meetings with the interested public, industry associations, environmental organizations, provinces, Aboriginal organizations and other federal departments.

Questions to consider in the Five Year Review

This discussion paper presents a wide range of ideas and suggestions to stimulate dialogue. Individuals and groups wanting to participate in the review are encouraged to consider the following questions.

- Are there additional issues that should be addressed in the Five Year Review?
- Are there other challenges that should be put on the table for discussion?
- Are there additional options that should be considered?
- To what extent can or should important environmental assessment methodological issues, such as scoping, be addressed through legislation?
- What is the appropriate balance or trade-off among some of the proposed options?

1. The Five Year Review

THE NEED FOR THE REVIEW

FIVE YEARS AFTER THE COMING INTO FORCE OF THIS SECTION, A COMPREHENSIVE REVIEW OF THE PROVISIONS AND OPERATION OF THIS ACT SHALL BE UNDERTAKEN BY THE MINISTER.

s. 72(1), *CANADIAN ENVIRONMENTAL ASSESSMENT ACT*

Five years ago, environmental assessment in Canada took a major step forward with the passage of the *Canadian Environmental Assessment Act (the Act)*. For the first time, the obligations of federal departments and agencies to conduct environmental assessments of projects involving the federal government were enshrined in legislation. For the first time, environmental assessment at the federal level was established in legislation as a tool that can support decision makers and promote sustainable development. For the first time, opportunities for the public to participate in the federal environmental assessment process were confirmed in legislation.

Over the past several years, much experience has been gained from putting these ideals into practice – by the Canadian Environmental Assessment Agency, senior managers and environmental assessment practitioners in the federal government, private sector proponents, non-governmental organizations and other groups. There is a need to reflect on this experience, to learn from it and to build on it so environmental assessment remains a dynamic tool for sound decision making.

This discussion paper has been prepared to encourage a dialogue on the future of environmental assessment at the federal level in Canada. It seeks to inform individuals, private sector companies, community and environmental organizations, other governments and Aboriginal organizations about their collective experience with the Act and about shared opportunities for strengthening the role of environmental assessment in planning and decision making.

The suggestions presented in this paper are intended to stimulate wider discussion. New ideas and options will be welcomed during the review process.

This discussion paper is organized into three major sections.

Part 1 briefly explains the scope and objectives of the Five Year Review, outlines the role environmental assessment can play in helping meet the goal of sustainable development, and summarizes the key international and domestic policy trends affecting environmental assessment.

Part 2 provides an overview of the federal environmental assessment process established under the Act and presents summary data on environmental assessments conducted under the Act in the past five years.

Part 3 reviews the major issues and concerns that have come out of the past five years' experience with the Act, and offers ideas for improvement in three general areas.

PREPARING FOR THE FIVE YEAR REVIEW

Preparations for the Five Year Review have been under way since early 1998, and have been characterized by a strong commitment by the Agency to involve those interested in environmental assessment in Canada: various levels of governments, industry, public interest groups and Aboriginal people. The Agency has consulted broadly to ensure that important issues are identified, concerns are backed by rigorous analysis and proposed approaches are practical and fair.

As a first step, the Agency prepared a framework for guiding the planning and conduct of the review. The framework was based on consultations with the federal government's Senior Management Committee on Environmental Assessment, the provincial environmental assessment administrators and the Regulatory Advisory Committee – an independent advisory group representing a wide range of interests.

A series of background studies provided critical information on the operations and experiences of the Act. Conducted by independent contractors (and including extensive consultations with other federal departments and organizations involved with environmental assessment), these background studies provided the data and analysis that formed the basis of this discussion paper. (The studies are listed in Annex 1.)

In addition to these initiatives, the Agency held a series of consultations in 1998 and 1999 with its environmental assessment partners and stakeholders to identify, from their perspective, the major issues arising from the first five years of experience with the Act. Among those consulted were:

- the federal government's Senior Management Committee on Environmental Assessment;
- environmental practitioners in the federal government;
- provincial environmental assessment administrators;
- the Regulatory Advisory Committee;
- the environmental assessment caucus of the Canadian Environmental Network (a network of environmental public interest groups);
- the environmental committee of the Assembly of First Nations; and
- industrial associations.

Two major workshops were held with federal departments as part of these consultations. One explored special concerns relating to the application of the Act and its regulations to projects outside Canada. The other looked at major issue areas related to the experience with the Act and considered possible approaches for addressing key concerns.

The 1998 report submitted to the House of Commons by the Commissioner of the Environment and Sustainable Development was another important resource for this public discussion paper and for the review preparations. The Commissioner's report identified areas of concern in the delivery of environmental assessment and provided data to substantiate the analysis.

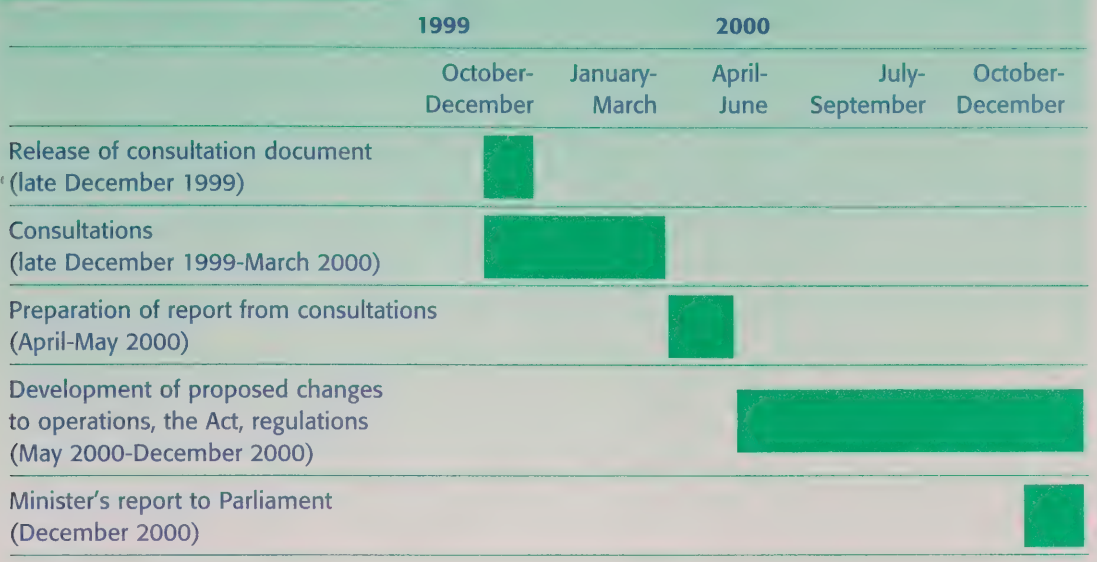
How the Five Year Review will work

The Five Year Review will give concerned individuals and organizations a say in the future of the Act. Beginning in January 2000, multi-stakeholder consultations will be held across the country to give Canadians an opportunity to provide feedback to the Minister on the operation and provisions of the Act, and to make suggestions for improvements. Opportunities will be provided to ensure the involvement of Aboriginal people in the review process, with the results integrated into the general review.

Consultations for the Five Year Review will be independently managed and facilitated, and will be open and transparent, broad and extensive, and open to new issues being raised. In addition, the consultations will provide a forum where consolidated stakeholder views can be presented and for iterative, multi-stakeholder discussions on key issues and options.

When the national consultations are completed, the Minister will prepare a report to Parliament on the results of the review. This report may consist of broad general direction, or it may include suggested amendments for improving the application and operations of the Act. Tabling in Parliament of the Minister's report is expected about one year after the review begins.

FIVE YEAR REVIEW TIME LINE



2. Environmental Assessment and Sustainable Development

Environmental assessment helps us shape the impact of human activities on our environment.

Human activities are affecting the planet's natural physical and biological systems on an unprecedented scale – with uncertain impacts on the daily lives and livelihoods of people in every part of the globe.

Whether the issue is climate change or toxic waste disposal, clean air or clean water, it has never been more important to understand the human "footprint" on the environment. Through better understanding, Canadians can design better policies and projects that consider environmental constraints, better manage the inevitable risks and uncertainties, and better balance and integrate society's environmental goals with its economic, social and cultural values. This is the task and challenge of environmental assessment.

Environmental assessment has a 30-year track record of helping decision makers.

Thirty years ago, environmental assessment was first introduced as a formal policy requirement in the path-breaking *United States National Environmental Policy Act*. Today, it is used in more than 100 countries around the world as a systematic approach for identifying and assessing the likely effects of proposed projects, policies and programs on the environment – the air, water, land and the life they support.

As a recent major study of global trends in environmental assessment concludes:

> The subsequent world-wide adoption of environmental assessment, within a relatively short period of time, makes it one of the more successful policy innovations. Nationally and internationally, the record of use and acceptance points to the value of environmental assessment as an instrument for decision making and problem solving.[1]

In Canada, environmental assessment is a responsibility shared across governments and other decision-making bodies. As a planning tool, environmental assessment has been applied in Canada for more than 25 years at both the federal and provincial government levels.

A 1974 cabinet directive launched the federal environmental assessment process. This process was formalized in 1984 when the federal government issued the *Environmental Assessment and Review Process Guidelines Order*. These guidelines were an important and effective step in helping to integrate environmental factors into the decision-making process for projects involving the federal government.

Over time, it became apparent that the environmental assessment process needed to be strengthened. Clear procedures were needed for conducting environmental assessments and for clarifying the responsibilities of certain federal agencies and bodies (e.g., Crown corporations) and to provide a mechanism for funding public participation in the process. There also was a need to ensure that environmental assessment supported the goal of sustainable development.

Consultations on reform began in 1987 and, in 1990, the government announced a reform package that included new environmental legislation, an environmental assessment process for new policy and program proposals, and a participant funding program to support public participation in panel reviews. Following nation-wide consultations and a comprehensive parliamentary review, Bill C-13, which became known as the *Canadian Environmental Assessment Act*, received royal assent in 1992. In early 1995, following a second round of national consultations, the Act and its four enabling regulations came into force.

Today, environmental assessment is recognized as an important decision-making tool in support of sustainable development.

Sustainable development is a relatively new and challenging concept: to meet the needs of the present without compromising the ability of future generations to meet their own needs.

[1] *Environmental Assessment in a Changing World: Evaluating Practice to Improve Performance*, Final Report of the International Study of the Effectiveness of Environmental Assessment, by Barry Saddler, June 1996, p.1.

Achieving this goal requires the integration of environmental, social and economic considerations into project decision making. Governments and leading industries worldwide recognize that sustainable development must become part of the way they do business; many are changing their planning processes to accommodate this new approach.

To help integrate the goal of sustainable development into the government's "way of doing business," every federal department must develop a practical strategy outlining how it will contribute to sustainable development within its areas of responsibilities. These sustainable development strategies must be updated every three years and are the benchmarks for measuring advances toward sustainable development. The Commissioner of the Environment and Sustainable Development monitors the progress of departments in implementing their strategies and reports to the House of Commons.

Environmental assessment can help bolster sound decision making in support of sustainable development. Considering adverse environmental effects before carrying out a project can prevent significant degradation of the environment, reduce risks to human health and decrease economic costs.

The introduction of the Act five years ago was part of the federal government's ongoing effort to make environmental assessment an effective tool for supporting planning and decision making at all levels. The Act requires federal departments and agencies to undertake an environmental assessment if they intend to develop a project themselves, provide funding or land for such a project, or issue certain licences, permits or other authorizations that will allow a project to go forward.

The environmental assessment of projects uses scientific analysis and public involvement to identify possible adverse environmental effects before they occur. Project design is an iterative process that can be driven by environmental assessment to allow projects to be designed in ways that are not only economically efficient and rewarding, but also compatible with a healthy environment and society, and supportive of sustainable development.

ENVIRONMENTAL ASSESSMENT IMPROVES DECISION MAKING

National Park Trail Redevelopments – Screening
The environmental assessment for two trail redevelopment projects examined issues associated with providing a high-quality national park experience in a safe manner; protecting an endangered species and its habitat; and protecting ecosystems designated as environmentally sensitive. Public input and consideration of alternatives led to design changes which contributed to the sustainability of the projects and to the development of an area plan for the park.

Copper Mine – Comprehensive Study
This comprehensive study involved both federal and provincial environmental assessments and addressed impacts from a proposed $140 million open pit copper mine. Benefits derived from the assessment included the development of emergency response plans, an environmental monitoring program and a follow-up assessment of the proponent's performance during project implementation.

Strategic environmental assessment has emerged as an important tool for sustainable development.

While the Act provides a framework for conducting environmental assessments on projects involving a federal government decision, strategic environmental assessment has been developed as a tool that allows decision makers to address possible environmental concerns early in the policy, program and plan development stage, as well.

Over the last 10 years, governments and international organizations have applied strategic environmental assessment in a variety of forms, from reviews of broad policy measures, to area- or region-wide assessments. It can complement and support project-level assessment by identifying potential project-level issues, considering alternatives, and identifying cumulative

environmental effects of projects that could result from the policy, program or plan.

In Canada, strategic environmental assessment has been applied at the federal level to important policy, plan or program proposals through a non-legislated process introduced in 1990 and updated in 1999. Under this process, an environmental assessment of a proposal must be conducted when:

- the proposal requires ministerial or cabinet approval, or relates to the implementation of a federal authority's sustainable development strategy; and
- implementation of the proposal may result in significant use of, changes in or risk to environmental resources, features or conditions.[2]

In submitting their first sustainable development strategies in 1997, many departments identified strategic environmental assessment as a tool for ensuring that environmental concerns are given consistent and early consideration in their policy making and planning procedures.

[2] For more information on strategic environmental assessment at the federal level, see: *Implementing the 1999 Cabinet Directive on the Environmental Assessment of Policy, Plan, and Program Proposals: Guidelines for Federal Authorities*, (Canadian Environmental Assessment Agency, 1999).

3. Key Trends in Environmental Assessment

INTERNATIONAL AND DOMESTIC TRENDS

The Canadian government is not alone in looking at how its environmental assessment process can contribute more effectively to planning and decision making.

A review of important current and emerging trends in environmental assessment at both national and international levels indicates a number of shared concerns.[3]

Resource constraint is challenging all jurisdictions.

Governments at all levels in Canada are coping with reduced resources for environmental assessment. All are striving to make the most effective and efficient use of available resources, frequently through streamlining procedures.

The challenge of reducing inefficiencies has also received considerable attention in other countries. Approaches have focused on simplifying project approvals, minimizing duplication and overlap, and drawing on expertise and resources from both within and outside government.

Advances in environmental assessment methodology have sought better integration with broader management and planning.

The preparation and application of project-type and project-specific environmental assessment guidelines by provincial governments have produced a substantial knowledge base. As well, some provinces and federal departments have sought to integrate environmental assessment into broader environmental management and planning activities.

Internationally, many countries have prepared environmental assessment guidelines, and there may be areas in which Canada can benefit from this experience. Some countries also have developed approaches for a more systematic integration of the knowledge derived from environmental assessment practice through such devices as effectiveness studies, environmental assessment audits and applied research.

For example, current limitations in environmental knowledge and understanding often make it difficult to predict fully the impacts of proposed developments and the efficacy of mitigation measures. Adaptive management has emerged as an approach whereby current understanding is used to set initial operating conditions, knowing explicitly that such conditions will be amended to preserve the health of the environment if dictated by new knowledge, improved technology or future developments.

The key trend in public participation in many other jurisdictions has been for earlier and ongoing opportunities for involvement.

There is considerable variability among Canadian jurisdictions in terms of the opportunities provided for public participation through environmental assessment legislation and regulations. One important trend has been for more and earlier opportunities for public involvement in screenings, scoping, report review and decision making. Recent environmental assessment regimes established under land claims throughout Canada have provided opportunities for involving Aboriginal people in the process. In general, the trend in public consultation practice in the provinces and territories has been toward more interactive consultation mechanisms, tailored to meet the needs and circumstances of specific projects, locations and public groups. Participant funding is used to a limited extent. Although some progress has been made, there is an ongoing need for enhanced opportunities to involve Aboriginal people.

International experience with public participation in environmental assessment is mixed. Participant funding tends to be rare. However, there is a trend toward earlier and ongoing involvement, and toward more collaborative approaches, including mediation and alternative dispute resolution. Some countries pay particular attention to facilitating public understanding of, and access to, environmental assessment information, and to involving groups typically underrepresented in the environmental assessment process.

[3] See Annex 1: Background Paper, *Trends in Environmental Assessment.*

There is increasing attention to how environmental assessment can help address the transboundary effects of projects.

The potential for adverse environmental effects across jurisdictional boundaries is receiving increasing attention. Environmental assessment is recognized as an important tool for helping decision makers anticipate and address such effects.

In Canada, transboundary effects can arise in several areas: across the border with the United States, across provincial or territorial boundaries, and across federal and Aboriginal lands. Internationally, Canada, the United States and Mexico are working toward an agreement on transboundary environmental impact assessment, through *the North American Agreement on Environmental Cooperation*. As well, Canada has ratified the United Nations *Convention on Environmental Impact Assessment in a Transboundary Context.*

Aboriginal self-government is reshaping environmental assessment throughout Canada.

Recent land claims and self-government agreements are proving to be significant forces in shaping environmental assessment. Under its policy on inherent rights, the federal government negotiates some measure of Aboriginal law-making authority over the environmental assessment of projects on Aboriginal lands. This is done in the form of self-government agreements, or in comprehensive land claims agreements with self-government provisions. Any negotiated Aboriginal jurisdiction must be exercised within the framework of the Canadian Constitution and cannot lead to the automatic exclusion of federal laws. Aboriginal environmental assessment laws exist concurrently in a partnering process, rather than displacing federal environmental assessment legislation.

There are some instances, however, where environmental assessment regimes have been negotiated under land claim agreements finalized before the promulgation of the *Canadian Environmental Assessment Act*. These regimes (e.g., those established under the *Mackenzie Valley Resource Management Act* and the pending Yukon Development Agreement Process legislation) stipulate environmental assessment requirements for proponents and resource managers in the areas administered under these claims agreements. Although these are federal laws, they may add requirements beyond those contained in the Act. The federal government is working to clarify the administration of these regimes and their relationship with the Act.

Environmental assessment standards have been recognized as important tools for supporting legislation and regulations.

The development of standards for environmental assessment has been another important trend in recent years. Standards can complement legislative and regulatory provisions by bringing greater predictability, consistency and quality assurance to environmental assessment processes.

In Canada, a draft environmental assessment standard is being developed through a broadly based consensus effort co-ordinated by the Canadian Standards Association and supported financially by the Agency. The standard would provide a voluntary framework for integrating environmental considerations into project planning, consultation and approvals. The framework addresses the role of proponents, practitioners, approval bodies and the public. Implementation of the standard is expected, on a voluntary pilot basis, in 2001.

Environmental assessment faces strikingly similar challenges across Canada and around the world.

Provincial jurisdictions consistently identify several critical issues facing their environmental assessment processes:

- overlap and duplication with federal processes;
- efficiency and streamlining;
- intergovernmental harmonization and communications;
- the treatment of cumulative, biodiversity, transboundary and sustainability effects;
- monitoring and follow-up;

- enhanced opportunities for public and Aboriginal involvement; and
- the implications for environmental assessment of the growing list of federal court decisions, land claims and self-government agreements.

Most jurisdictions in Canada are trying to balance a desire for greater efficiency in environmental assessment with the desire for enhanced quality and effectiveness. Another shared concern is establishing stronger links between environmental assessment and other forms of environmental management and planning.

Internationally, many jurisdictions also are seeking to balance desires for:

- greater *efficiency*, such as through streamlining procedures and clearer documentation; and
- greater *effectiveness*, as reflected in the contribution of environmental assessment to decision making and sustainable development, the quality of assessments and the value of public input.

As well, several countries are looking at more challenging issues related to the role of environmental assessment in society: the integration of social justice concerns, the implications of privatization and the application of information technologies.

Other Policy Trends Affecting the Five Year Review

The Five Year Review of the Act cannot be conducted in isolation from the world around us.

Before reviewing the detailed experience with the federal environmental assessment process established by the Act, it may be useful to look briefly at the broader picture – the important trends and underlying factors shaping public policy in Canada. These form the backdrop for considering where environmental assessment has been in Canada and where it may be headed.

Environmental assessment is part of a much broader canvas of federal-provincial relations.

Environmental assessment is part of a much broader canvas of federal-provincial relations. Difficulties – or progress — in one policy area can affect other areas.

Under the Canadian Constitution, responsibility for environmental management is shared between the two orders of government, giving rise to the potential for duplication, delays and inconsistent application in environmental assessment. While this has resulted in disagreements between provincial and federal governments, a spirit of co-operation has emerged, as reflected in *the Canada-Wide Accord on Environmental Cooperation* and the bilateral harmonization agreements on environmental assessment. Challenges remain, but considerable progress has been made in conducting joint or co-operative reviews.

In a global economy, public policy measures must be scrutinized for their impacts on competitiveness.

One of the most important developments in the last decade has been the globalization of the economy. Canadians recognize that their way of life is closely linked to other countries in a manner impossible to imagine a generation ago. As a result, concerns about the competitiveness implications of public policy measures have never been greater.

Globalization puts a premium on the efficiency and effectiveness of all public policy instruments and operations – from legislation and regulations, to guidelines and services. Globalization also draws attention to the potential for Canada's environmental assessment laws and regulations to adversely affect the private sector, particularly when compared to the processes of our trading competitors. However, numerous studies have concluded that the cost of environmental assessment in Canada is, typically, a very low percentage of the total cost of a project, and effective environmental assessment processes provide net

economic benefits to society. Time delays, the uncertainty of the environmental assessment process and the attendant costs in terms of investment climate may be more significant concerns than the cost of environmental assessment.

The government's commitment to fiscal responsibility has affected environmental assessment, along with many other areas of public policy.

When the Act first came into force, funding for the environmental assessment function of federal departments and agencies was provided largely through the Green Plan, a special reserve fund established to support environmental initiatives.

With the end of the Green Plan, federal departments must fund their environmental assessment activities through their regular budgets, allocating scarce resources among competing needs and priorities. In this climate of fiscal restraint, environmental assessment, like all policy measures, must demonstrate its value, efficiency and contribution to government priorities.

The courts are shaping many areas of public policy.

A powerful recent trend in Canadian public policy has been the role of the courts in shaping many areas of public policy, from human rights to federal–provincial relations. Environmental assessment, too, has been affected by recent court decisions. For example, the quality of environmental assessment conducted, project scoping and lack of consultation have been frequent subjects of court challenges. As a result, the Act will continue to evolve as judicial decisions provide clarification and direction on key issues of the process. This may be a natural evolution for any new legislation, but the prospects for litigation and new court direction can contribute to greater uncertainty and unpredictability in the process, at least in the short run.

4. The Federal Environmental Assessment Process

Purposes of the Act

The *Canadian Environmental Assessment Act* sets out, for the first time in legislation, responsibilities and procedures for the environmental assessment of projects involving the federal government.[4] The Act applies to projects for which the federal government has a decision-making authority, whether as proponent, land manager, source of funding or as regulator. The intent is to establish a balanced process that brings a degree of certainty to environmental assessments and helps federal departments and agencies determine the environmental effects of projects early in their planning stage.

The purposes of the Act are:

(a) to ensure that the environmental effects of projects receive careful attention before responsible authorities take actions in connection with them;

(b) to encourage responsible authorities to take actions that promote sustainable development and thereby achieve or maintain a healthy environment and a healthy economy;

(b.1) to ensure that responsible authorities carry out their responsibilities in a coordinated and efficient manner with a view to eliminating duplication in the environmental assessment process;

(c) to ensure that projects that are to be carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out; and

(d) to ensure that there be an opportunity for public participation in the environmental assessment process (s. 4).

Guiding principles

The Act is founded on three fundamental principles.

- *Environmental assessment as a planning tool:* The environmental assessment process should be applied as early in the project's planning stages as practicable, before irrevocable decisions are made, so that environmental factors are incorporated into decisions in the same way that economic, social and policy factors have traditionally been incorporated.
- *Self-directed assessment:* Under this principle, the federal department responsible for making a decision on the project (the responsible authority) has a measure of discretion when conducting the environmental assessment. It determines the scope of the project, the assessment and the factors to be considered, directly manages the environmental assessment process and ensures that the screening report is prepared in accordance with the Act.
- *Public participation:* Public participation contributes to the effectiveness of the environmental assessment and to the overall public trust and confidence in the environmental process.

When the Act applies

The Act applies when a federal department or agency is required to make a decision on a proposed project. A project is defined as:

- an undertaking in relation to a physical work, such as any proposed construction, operation, modification, decommissioning or abandonment; or
- any proposed physical activity not relating to a physical work that is set out in the regulations under the Act.

[4] The *Environmental Assessment and Review Process Guidelines Order*, in effect from 1984 until 1995, was not legislation although courts ruled that it had the force of law. *The James Bay and Northern Quebec Native Claims Settlement Act, 1977* and the *Western Arctic (Inuvialuit) Claims Settlement Act, 1984* provide environmental assessment legislation, but only in part of Canada.

Under the Act's "triggering" provisions (s. 5), an assessment is required if a federal authority exercises or performs one or more of the following powers, duties or functions in relation to a project.

- Propose the project (known as the "proponent trigger"). This has been the trigger in about 21 percent of federal environmental assessments.
- Grant money or any other form of financial assistance to the proponent (the "funding trigger"). This trigger has accounted for about 34 percent of the environmental assessments.
- Grant an interest in land to enable a project to be carried out (i.e., sell, lease or otherwise transfer control of land) (the "land trigger"). This has initiated about 11 percent of the assessments.
- Exercise a regulatory duty in relation to a project, such as issuing a permit or licence, that is included in the Law List prescribed in the Act's regulations (the "Law List trigger"). This has been the trigger in about 34 percent of federal assessments.

Special provisions of the Act provide the Minister of the Environment with discretionary powers to trigger an environmental assessment in exceptional circumstances if the Minister believes the project:

- has potential significant environmental effects or raises public concerns; or
- may cause significant adverse transboundary environmental effects in cases when the project would otherwise not require an environmental assessment, and no other federal act or regulation applies.

Application of the Act to Reserve Lands

For projects carried out on reserves subject to the Indian Act, the *Canadian Environmental Assessment Act* only requires environmental assessment when the federal government initiates projects, or is required to issue a federal permit or authorization, or transfers land to permit a project to be carried out. The Act does not require an assessment for projects funded by federal authorities on reserves when there is no other federal involvement in the project. Pending the implementation of environmental assessment regimes under initiatives such as self-government agreements, the *First Nations' Land Management Act* or comprehensive land claims, the federal government would like to ensure that projects on reserve land are subject to environmental assessment, and that First Nations have the authority to initiate and undertake these assessments. As an interim measure, a memorandum of understanding has been signed between the Agency and various departments that provide funding for on-reserve projects, to ensure that environmental assessments are carried out.

In keeping with the principle of self-assessment, the Act provides for the development of two regulations under which band councils would be responsible for ensuring that an environmental assessment is completed before allowing a project to proceed on reserve lands. Under s. 59(i)(i), the regulations would adapt the Act for projects to be carried out on Indian reserves, or on surrendered or other lands vested in Her Majesty and subject to the *Indian Act*. Under s. 59(l), the regulations would set out the manner of conducting any assessment of the environmental effects of, and follow-up programs for, a project for which a person or body receives financial assistance provided by a federal authority to enable the project to be carried out on a reserve set apart for the use and benefit of an Indian band.

Environmental Assessment Types

The Act established a number of environmental assessment types or tracks, depending on the nature of the project and the likely significance of possible environmental effects.

- Most projects are assessed by means of a screening, with an extension of this track, *model class screenings*, intended to streamline the screening process;
- Larger projects that have the potential for greater environmental effects or that could generate public concerns may require a more detailed assessment through a

comprehensive study. The type of project requiring this track of assessment is described in the *Comprehensive Study List Regulations*.

- Reviews by an *independent panel* or *mediator* appointed by the Minister of the Environment may be required in exceptional circumstances, when major public concerns exist or when the environmental effects are uncertain or likely to be significant.

All assessments must include consideration of:

- the environmental effects of the project, including cumulative effects likely to result from the project in combination with other past or future projects;
- the significance of the effects;
- any comments received from the public; and
- mitigation measures that are technically and economically feasible.

In addition, comprehensive studies, panel reviews and mediations must consider:

- the purpose of the project;
- alternative means of carrying out the project that are technically and economically feasible;
- effects of the project on the capacity of renewable resources to meet present and future needs; and
- the need for any follow-up program.

A referral to a review panel or mediator is made when:

- it is uncertain whether the project is likely to cause significant adverse environmental effects;
- the project is likely to cause significant adverse environmental effects and a determination must be made whether these effects are justified in the circumstances; or
- public concerns about the project and its possible environmental effects warrant further investigation.

If the Minister believes the adverse effects are likely to be significant and unjustified in the circumstances, no referral is made to a panel review or mediation.

An independent panel or mediator, appointed by the Minister, conducts the review. In certain cases, a panel review may be conducted jointly with another jurisdiction. Panel reviews and mediations are advisory rather than decision-making processes. In conducting a panel review, the panel must:

- ensure the information required for the environmental assessment is obtained and made available to the public;
- convene hearings in a manner that offers the public an opportunity to participate;
- prepare a report setting out the rationale, conclusions and recommendations of the panel, including any mitigation measures and follow-up program, as well as a summary of comments received from the public; and
- submit the report to the Minister and the responsible authority.

The Role of the Canadian Environmental Assessment Agency

The Act established the Agency to replace the Federal Environmental Assessment Review Office (FEARO). The Agency reports to the Minister of the Environment, but operates independently of all federal departments and other agencies, including Environment Canada.

The Agency's major objectives are to:

- administer and promote compliance with the federal environmental assessment process;
- advocate high-quality environmental assessment through leadership, training and research;

- promote uniformity and harmonization in the assessment of environmental effects across Canada, with federal departments, provinces and Aboriginal groups; and
- ensure opportunities are provided for public participation in the environmental assessment process.

The Agency has specific responsibilities for reviewing the procedural compliance of class screening reports and comprehensive study reports, and for providing opportunities for comment on these reports. It also manages mediations and panel reviews.

In addition, the Agency assists the Minister with any international responsibilities related to environmental assessment, such as the administration of the North American Agreement on Environmental Cooperation and the United Nations Convention on Environmental Impact Assessment in a Transboundary Context.

Public participation tools

Public participation in the federal environmental assessment process is a fundamental feature of the Act – from the purpose of the legislation, to provisions for public involvement at certain steps in the process, to mechanisms that seek to facilitate participation. For example:

- In the preamble to the Act, the government states its commitment to "facilitating public participation in the environmental assessment of projects to be carried out by or

AGENCY TRAINING COURSES AND GUIDANCE MATERIALS

Training Courses:
- Orientation to the Act and Regulations
- Comprehensive Studies Training
- Cumulative Effects Assessment Training

Guides:
- *Responsible Authority's Guide* (November 1994)
- *Reference Guide – Addressing Cumulative Environmental Effects* (November 1994)
- *Reference Guide – Public Registry* (November 1994)
- *Reference Guide – Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects* (November 1994)
- *Reference Guide – Assessing Environmental Effects on Physical and Cultural Heritage Resources* (April 1996)
- *Reference Guide for the Federal Coordination Regulations* (July 1997)
- *Guidelines for Implementing the 1999 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals* (1999)
- *Participant Funding Program – Guide and Application Form*
- *Cumulative Effects Assessment – Practitioners' Guide* (February 1999)
- *The Citizen's Guide* (1995)
- *Guide to the Preparation of a Comprehensive Study for Proponents and Responsible Authorities* (1997)
- *Procedures for an Assessment by a Review Panel* (November 1997)
- *Guide to Information Requirements for Federal Environmental Assessment of Mining Projects in Canada* (Test version) (February 1998)
- *A Guide on Biodiversity and Environmental Assessment* (April 1996)

Operational Policy Statements:
- *Addressing Cumulative Environmental Effects under the Canadian Environmental Assessment Act* (November 1994)
- *Establishing the Scope of the Environmental Assessment* (November 1994)
- *Addressing "Need for", "Purpose of", "Alternatives to" and "Alternative Means" under the Canadian Environmental Assessment Act* (November 1994)

with the approval or assistance of the Government of Canada and providing access to the information on which those environmental assessments are based."

- One of four purposes of the Act (4.d) is "to ensure that there be an opportunity for public participation in the environmental assessment process."

Public registries

Responsible authorities are required to establish a public registry for every environmental assessment as a means of providing convenient public access to the reports and other information about the assessment.

The Federal Environmental Assessment Index

The Federal Environmental Assessment Index (Index) was developed by the Agency to assist federal departments and agencies in meeting their public registry obligations in an efficient manner, and to provide a "single window" or "pointer" for environmental assessment information across the federal government. While participation by federal departments is voluntary, 22 federal institutions currently post basic data about their environmental assessment activities on the Index. Several others do not use the Index because of the small number of environmental assessments that they conduct in a year. Users access about 26,000 files each month. The Agency is addressing concerns expressed about some technical problems with the Index that limit its user friendliness and utility.

Participant funding

Established in 1990, the Participant Funding Program provides financial assistance to members of the public and organizations to prepare for, and participate in, panel reviews. The funding assists groups and participants to hire experts to review documents and help prepare submissions, attend hearings, defray travel costs associated with participating in hearings and scoping meetings, and inform and consult their membership.

Funding is normally made available at two review stages: scoping the issues and the examination of the environmental impact statement submitted by the proponent and participation in the panel's public hearings on the proposed project.

Regulations issued under the Act

Regulations established under the Act have put the Act into force, clarified responsibilities of various parties, and sought to strengthen the efficiency of the federal environmental assessment process.

The Four Enabling Regulations

Before the Act could be put into practice, four regulations had to be developed to identify those types of projects required to undergo an environmental assessment under the Act. The four regulations are the following:

- *Law List Regulations* list the federal permits, licences and approvals that trigger the need for an environmental assessment under the Act.
- *Inclusion List Regulations* identify those physical activities not related to physical works that are defined as a project under the Act and that require an environmental assessment (e.g., low-level military flying; the ocean disposal of any substance requiring a permit under the *Canadian Environmental Protection Act*).
- *Comprehensive Study List Regulations* list those types of projects requiring a comprehensive study, typically large or complex projects that are more likely to cause significant adverse environmental effects (e.g., larger electrical generating stations and pulp mills).
- *Exclusion List Regulations* identify the types of projects not requiring an environmental assessment under the Act, because they are considered to have insignificant effects on the environment (e.g., the proposed maintenance or repair of an existing physical works or the proposed construction of a small building).

Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements

The *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements* came into force in early 1997. Under these regulations, each responsible authority is required to carry out its duties "in a coordinated manner with a view to eliminating unnecessary duplication in the environmental assessment process." The regulations seek to ensure that the federal environmental assessment process is timely and predictable, and that only one federal environmental assessment is conducted for a project.

Key elements of the regulations include identification and notification of responsible authorities and expert departments; consultation on the scope of the environmental assessment; co-ordination of time schedules; and co-ordination of all responsible authority interests and involvement in comprehensive study recommendations.

Projects Outside Canada Environmental Assessment Regulations

The *Projects Outside Canada Environmental Assessment Regulations*, which came into effect in November 1996, were introduced to ensure that projects outside Canada comply with the spirit and principles of the Act. The regulations exclude and vary some of the detailed operational sections of the Act, to better respect the sovereignty of foreign states, to ensure that environmental assessments are conducted in accordance with international law and to allow for flexibility in meeting various conditions in foreign states.

Federal Authorities Regulations

The *Federal Authorities Regulations* came into effect in May 1996 to ensure that the Act covered activities related to the extraction of oil and gas from federal lands in offshore Newfoundland. They were instigated to enable the co-ordination of a joint review of the Terra Nova project with the Government of Newfoundland, and the Canada-Newfoundland Offshore Petroleum Board.

Canada Port Authority Environmental Assessment Regulations

The *Canada Port Authority Environmental Assessment Regulations* came into force in July 1999. They apply federal environmental assessment principles to Canada Port Authorities but with certain variations that take into account their unique competitive situations and federally regulated land bases.

Key elements of the regulations include a three-level approach to the environmental assessment process (screening, comprehensive study and panel review); a self-directed process for the first two levels; the ability of the Minister of the Environment to call for a panel review; and a requirement for each port authority to establish a public registry.

5. Summary of Environmental Assessments

Since the inception of the *Canadian Environmental Assessment Act* in January 1995, federal government departments have increasingly incorporated environmental assessment into their decision-making processes. By January 2000, it is expected that environmental assessments will have been initiated on more than 25,000 projects, with the federal government spending an estimated $40 million each year on environmental assessment.

Twenty-three government departments have completed environmental assessments. The most assessments have been from Heritage Canada (Parks), Fisheries and Oceans Canada, Agriculture and Agri-Food Canada, and Indian and Northern Affairs Canada. The high number of assessments by these departments is not necessarily an indication of the nature or complexity of the assessments.

WHAT TYPES OF PROJECTS UNDERGO A SCREENING?

To help determine the kinds of projects undergoing screenings, an informal survey of listings on the Federal Environmental Assessment Index was prepared. The scan showed that many screenings have been for relatively complex projects (e.g., construction and operation of a waste-sorting and handling building, waste management area for above-ground and bulk storage for low-level radioactive waste, the construction of a new four-lane highway, the construction and operation of a hydro-electric development).

Some projects undergoing screenings were relatively small, with little potential for significant environmental effects (e.g., installation of a direction sign for a golf course, construction of a small seed potato storage building, maintenance, improvement and replacement of existing sewer lines, provision of marketing assistance and installation of a computer, and the construction of a truck weigh scale).

The remaining screenings fell between small and complex projects, with their potential for environmental effects often connected to their surrounding environment, rather than to the size of the project (e.g., widening and rerouting of trails through a national park, dredging a small water body, and cages, nets and moorings for aquaculture farms).

SCREENINGS

Frequency and nature of application

Of the nearly 25,000 environmental assessments initiated under the Act so far, more than 99 percent involved the screening level of assessment.

The type of project undergoing screening varies widely. Many are relatively small with minor potential impacts (e.g., the installation of park benches or the rebuilding of a community dock). Other screenings involve more complex projects likely to have environmental impacts (e.g., small hydro-electric developments or short-distance gas pipelines).

The time taken to complete a screening can vary from one day for a small, simple project, to several months for more complex undertakings. The length of time does not necessarily reflect the number of days of staff time, but rather the elapsed time from initiating the screening to completing it.

Screenings have been undertaken in every province and territory. From January 1995 to the end of June 1999, Saskatchewan recorded the greatest number of environmental assessments (2,993) on the Index, many of which were for agricultural permits on Aboriginal lands. In contrast, Prince Edward Island recorded the fewest (531) assessments.

In addition, more than 300 screenings were conducted on projects outside Canada by the Canadian International Development Agency and the Department of Foreign Affairs and International Trade.

Compliance with the Act

Under the Act, screenings are self-directed assessments. That is, federal responsible authorities have discretion in how the assessment is conducted and are responsible for making a decision on the project following the assessment. There is no central agency co-ordination or monitoring of screenings. As a result, there is little comprehensive

information on how well screenings have been conducted under the Act or on how they could be improved.

To address this information gap, the Agency commissioned, in 1998, a major review of how federal departments and agencies were conducting screenings.[5] The study included 191 screenings from nine departments and aggregate information on another 300 screenings from two other departments. The compliance monitoring study made the following conclusions. While the study provided important insights, the findings may not be representative of all screenings, given the small sample size.

- *Timing of the screening:* About 20 percent of the sample screenings were initiated at the conceptual stage of the project, about 40 percent early in the planning process and about 40 percent late in the planning process.
- *Scope of the project:* Overall, the scope was defined early in the process for about 81 percent of the sample screenings; however, there were inconsistencies and uncertainties in application.
- *Identification of environmental effects:* A formal methodology for identifying and assessing environmental effects was used in about two thirds of the sample, though this level varies widely by department. Practitioners also reported reliance on professional judgment; cumulative effects were considered in about 61 percent of the sample, though there was inconsistency in interpretation of the term.
- *Mitigation:* Predicted environmental effects were rated to determine the need for mitigation measures in 61 percent of the sample screenings. There was considerable variation among departments.
- *Follow-up:* About one half of the medium and large sample screenings included specifications for follow-up to assess the effectiveness of mitigation measures. In some departments, follow-up was seldom specified.
- *Reporting:* About one half of the sample screenings were registered in the department's public registry before the screening decision. The majority of the screenings were registered in the Index by all but one of the departments.

Public participation

An independent background study commissioned by the Agency[6] concluded that public participation activities have been included in about 10 to 15 percent of all screenings under the Act, though the level varies greatly across departments, depending on the nature of the projects. Proponents involved the public more frequently in larger, complex screenings such as water diversion or flood embankment projects – projects that fall between small-scale, routine projects and those larger ones that would undergo a comprehensive study.

SCREENINGS AT A GLANCE

Typical Costs for a Screening (staff and operating costs)

Small project:	$300 – $5,000
Larger project:	$5,000 – $20,000
Average:	$2,300

Time Required to Complete:

Small project:	a few days
Larger project:	several months

CLASS SCREENINGS

Since 1996, the Agency has worked with federal departments and agencies, provincial and municipal departments, industrial associations and environmental groups to promote the class screening concept and to provide advice and assistance in developing model reports. So far, only two reports have been declared by the Agency as model class screening reports:

[5] See Annex 1: Background Paper *Compliance Monitoring Review.*

[6] See Annex 1: Background Paper *Public Participation in Screenings and Comprehensive Studies.*

- routine projects within the Town of Banff (by Parks Canada), approved in mid-1998; and
- the importation of European honey bees into Canada (by the Canadian Food Inspection Agency), approved in early 1999.

The Banff class screening has been used more than 28 times for projects such as the laying of a municipal water main and the installation of gates at a cemetery.

About 14 additional class screening reports were in development as of mid-1999, covering such activities as maintenance dredging of seasonal fishing harbours, leasing of Indian lands for agriculture, and fish habitat and restoration projects.

Comprehensive studies

Since their introduction as an intermediate level of environmental assessment, between the screening track and the panel review process, comprehensive studies have been used with 46 proposed projects requiring a comprehensive study since the Act's inception in 1995. As of mid-1999, 23 of the 46 studies were still under way.

Of the comprehensive studies completed to date (see Table 1), the project proposals assessed were for large mines, marine terminals, pipelines, roads, waste treatment facilities, a water supply, a canal, a used fuel storage facility and the decommissioning of military bases. A typical comprehensive study may last about 175 days, measured from the starting date as listed on the Index until the announcement of the Minister's decision on the project. However, the length has ranged from 117 to 462 days.

Many factors can affect the timing – and therefore predictability – of a comprehensive study, and not all are within the control of either the federal responsible authority or the Agency. Of special importance in determining the time required in a comprehensive study are the preparation of analysis and data by the proponent, public consultations by the proponent, and the need to consult with other federal departments and jurisdictions.

Agency guidance

The Agency has provided guidance and training for responsible authorities and project proponents on planning, conducting and documenting comprehensive studies. These materials have emphasized the value of the Act as a planning tool, incorporating environmental concerns early in the planning process. Agency advice also has focused on the importance of public involvement in comprehensive studies.

Public participation

Public participation in comprehensive studies is mandatory only after the study report has been completed, when the Agency invites the public to review and comment on the report.

An independent background study commissioned in 1999[7] concluded that public participation activities, before the review-and-comment period, have been included as part of all comprehensive studies conducted to date. This participation has taken the form of public meetings, open houses, advisory committees, workshops, and community liaison office and site visits. The study concluded that most comprehensive studies have involved the public early in the process.

The Agency is responsible for managing the review-and-comment period after the submission of the comprehensive study report. The Agency typically has provided a comment period for a minimum of 30 days, though the period has been as long as 60 days, and as low as 15 days (following a previous 30-day review and comment period already held as part of the assessment by the provincial government). The number of public comments received during this review period has ranged from nil (a decommissioning of a Canadian Forces base) to nearly 200 (a proposed used fuel storage facility at a nuclear generating station).

[7] See Annex 1: Background Paper *Public Participation in Screenings and Comprehensive Studies.*

COMPREHENSIVE STUDIES AT A GLANCE

Number completed to date:	23
Number still active (mid-1999):	23
Length of time to complete:	175 days (avg.)
Public review and comment period:	
Typical length:	30 days
Comments received:	nil – 200

TABLE 1 COMPLETED COMPREHENSIVE STUDIES

Tracadie Rivers Link Channel (Corporation du Développement des Deux Rivières Tracadie Inc.)	Proposal to construct a canal to facilitate development of a recreo-tourism project in Tracadie, New Brunswick. **Responsible Authority:** Human Resources Development Canada
Decommissioning of CFS Debert (National Defence)	Proposal to decommission a military base near Truro, Nova Scotia. **Responsible Authority:** National Defence
Alliance Pipeline (Alliance Pipeline Ltd.)	Proposal to construct and operate the Canadian portion of a major new natural gas pipeline from northeastern British Columbia to Chicago, Illinois. **Responsible Authorities:** National Energy Board, Fisheries and Oceans Canada, Agriculture and Agri-Foods Canada (PFRA)
Waste Treatment Centre Upgrade Chalk River (Atomic Energy of Canada Limited)	Proposal to upgrade the liquid waste treatment centre at Chalk River Laboratories. **Responsible Authority:** Atomic Energy Control Board
ADM Kahnawake (Archer Daniels Midland Company	Proposal to construct and operate a distribution and grain terminal to be located in Kahnawake, Quebec. **Responsible Authorities:** Indian and Northern Affairs Canada, Fisheries and Oceans Canada
Athabasca Seasonal Road, Saskatchewan (Fisheries and Oceans Canada, Indian and Northern Affairs Canada)	Proposal to construct and operate a winter road, leading to an all season highway. The project also includes decommissioning dredging activities and navigational aids in the Athabasca River and Lake Athabasca in Alberta. **Responsible Authorities:** Fisheries and Oceans Canada (Canadian Coast Guard), Indian and Northern Affairs Canada
CFB-Calgary (National Defence)	Proposal to decommission the CFB Calgary Base, Calgary, Alberta. **Responsible Authority:** National Defence
CFB Jericho and CFB Chilliwack Decommissioning (National Defence, Headquarters)	Proposal to decommission two bases in lower mainland, British Columbia. **Responsible Authority:** National Defence

TABLE 1 CONTINUED...

CIMBEC Marine Terminal (CIMBEC Canada Inc.)	Proposal to construct, operate and decommission a marine terminal by Port-Daniel, Quebec designed to handle vessels up to 35,000 tonnes. **Responsible Authority:** Fisheries and Oceans Canada
Huckleberry Mine (Huckleberry Mines Ltd.) Houston, British Columbia	Proposal to construct, operate and decommission an open pit copper mine to be located about 86 km southwest of **Responsible Authority:** Fisheries and Oceans Canada
Kemess South Mine (El Condor Resources, Royal Oak Mines)	Proposal to construct, operate and decommission a copper and gold mine to be located within the Peace River Regional District, in northern British Columbia. **Responsible Authority:** Fisheries and Oceans Canada
Musselwhite Gold Mine (Placer Dome)	Proposal to construct, operate and decommission a gold mine to be located in northwestern Ontario. **Responsible Authority:** Fisheries and Oceans Canada
Newfoundland Transshipment Terminal Project (Chevron & Mobil Oil)	Proposal to construct and operate a marine terminal and on-shore storage tanks for crude oil. **Responsible Authority:** Fisheries and Oceans Canada
Northern Wood Preservers (Environment Canada)	Development of a hazardous waste disposal site in Thunder Bay, Ontario. **Responsible Authorities:** Environment Canada, Fisheries and Oceans Canada
TQM – PNGTS Extension (Trans Quebec & Maritimes Pipeline Inc.)	Proposal to construct and operate a natural gas pipeline extension from Montréal to Portland, Maine. **Responsible Authorities:** National Energy Board, Fisheries and Oceans Canada
Stanleigh Mine (Rio Algom Limited)	Decommissioning of Stanleigh Uranium Mine, Elliot Lake. **Responsible Authorities:** Atomic Energy Control Board, Fisheries and Oceans Canada
Project Millennium (Suncor Energy Ltd.)	Proposal to expand an oil sands operation in northern Alberta. **Responsible Authority:** Fisheries and Oceans Canada
Greenville-Kincolith Road (Ministry of Transportation and Highways, British Columbia)	Proposal to construct new road, and upgrade old road, construct two bridges; 60 percent of road to be constructed across Indian reserve land. **Responsible Authority:** Indian and Northern Affairs Canada
Saint John Lateral (Maritimes and Northeast Pipeline)	Proposal for construction of a pipeline in New Brunswick. **Responsible Authorities:** National Energy Board, Fisheries and Oceans Canada
Waskaganish Permanent Road (Waskaganish First Nation)	Proposal for the construction of a permanent road to connect the community of Waskaganish to the existing Matagami-LG2 road. **Responsible Authorities:** Indian and Northern Affairs Canada, Fisheries and Oceans Canada

TABLE 1 CONTINUED...

Halifax Lateral Pipeline (Maritimes & Northeast Pipeline)	Proposal for construction of a pipeline in Nova Scotia. **Responsible authorities:** National Energy Board, Fisheries and Oceans Canada
Valley South Water Project (Valley South Water Co-op Ltd.)	Proposal for the installation of a water supply system within the Municipal District of Acadia No.34 in southeastern Alberta. **Responsible Authority:** Agriculture and Agri-Food Canada (PFRA)
Bruce Used Fuel Dry Storage Facility (Ontario Hydro)	Proposal for the development of a dry storage facility for the Bruce Nuclear Power Development site, to store used fuel from the Bruce site CANDU reactors. **Responsible Authority:** Atomic Energy Control Board

Panel reviews

Since the introduction of the Act, five projects have undergone review by a panel (see Table 2), and another four panel reviews were under way as of mid-1999 (see Table 3). The majority of these reviews were performed jointly, either combining the federal process with that of a provincial jurisdiction, or combining it with another federal review process, such as that of the National Energy Board.

The completed panel reviews were:

- the Express Pipeline Project, a proposed natural gas pipeline in southern Alberta, conducted jointly with the National Energy Board using its process (completed 1995);
- the Sable Gas Project, a proposal for an offshore natural gas development in Nova Scotia, conducted jointly with the National Energy Board, the Canada-Nova Scotia Offshore Petroleum Board and the Province of Nova Scotia (completed 1997);
- the Little Bow-Highwood Project (Phase I), a proposed water diversion plan conducted by a joint federal-provincial panel with Alberta's Natural Resources Conservation Board (completed 1998);
- the Terra Nova Project, a proposed offshore oil development conducted by a joint federal-provincial panel with Newfoundland and the Canada-Newfoundland Offshore Petroleum Board (completed 1997); and
- the Voisey's Bay Project, a proposed nickel-copper-cobalt mining development in Labrador conducted by a joint review involving the Government of Canada, the Government of Newfoundland and Labrador, and the Labrador Inuit Association and the Innu Nation (completed 1999).

The four active panels are:

- the Cheviot Coal Project, a proposed coal mine in Alberta, conducted jointly with the Alberta Energy Utilities Board and reconvened as a result of a court decision;
- the Little Bow-Highwood Project (Phase II), a proposed water diversion plan, conducted by a joint federal-provincial panel with Alberta's Natural Resources Conservation Board (Phase I of the review was completed in 1998);
- the Millennium West/Lake Erie Crossing, a proposed natural gas pipeline project, conducted jointly with the National Energy Board; and
- the Red Hill Creek Expressway, a proposed highway project in Ontario, the first panel review to be conducted under the Act alone.

(A proposed ski development in Banff, Alberta was referred for a panel review, but the proponent withdrew the proposal after the scoping of issues was completed and participant funding had been allocated.)

Ministerial guidelines

Over the past few years, the Agency recognized the need to update the procedures for panel reviews to improve efficiency and introduce a greater measure of predictability into the process. In the past, panels had been responsible for developing their own operational and hearing procedures. This led to some delays and to inconsistencies from one review to another.

New panel procedures, in the form of ministerial guidelines, were developed over two years by the Agency's multi-stakeholder Regulatory Advisory Committee, and were subject to extensive public consultation.

The procedures seek to improve the efficiency and predictability of the panel review process by establishing specified time periods for the different phases of the review under the control of the federal government. For example, the time line for the review of a project from its referral to the submission of the panel's final report has been set at a maximum of 396 days. This does not include the time required for the proponent to prepare the environmental impact statement or supply additional information. The procedures also include measures to promote public participation in the process, providing more time for participants to prepare for hearings, opportunities for direct questioning and public meetings to discuss the adequacy of the proponent's environmental impact statement.

The guidelines apply to federal-only panels, but will form the basis for discussions with other governments to cover joint reviews.

Cost recovery

Several federal departments and agencies have reviewed opportunities to recover some direct costs associated with the completion of environmental assessments. However, the only regulation developed so far applies to the Agency for costs it incurs to administer certain panel reviews. To date, there has not been an opportunity to implement this regulation because there has not been a panel where the proponent fits the criteria for cost recovery.

The Agency has been working with other federal departments to develop recommendations on the recovery of other federal department costs in support of panel reviews and comprehensive studies.

Substitution

While the Act permits the Minister to substitute an existing federal public hearing process for a panel review, this has not occurred yet. Discussions are under way to develop substitution agreements with the National Energy Board and with the Environmental Impact Review Board of the Inuvialuit Settlement Region of the Northwest Territories.

Public participation

The public contributed actively to panel reviews by participating in scoping sessions, reviewing environmental impact statements and presenting written or oral comments on the proposals under review.

Participant funding

In the nine panel reviews referred for review under the Act, public participants received $840,046 through the Participant Funding Program. The program received 85 applications, of which 62 were approved.

The largest single funding award was $80,000 each to the Labrador Inuit Association and the Innu Nation in the Voisey's Bay panel review. The funds allocated to the Labrador Inuit Association were to finance a review of the proponent's environmental impact statement focusing on all aspects of production and management of tailings, acid generation, waste rock disposal, water quality and management, impacts and implications of shipping through ice, the impacts on marine and terrestrial ecosystems, and the incorporation of Inuit traditional knowledge. The allocation to the Innu Nation was for a similar review of the proponent's environmental impact statement including an assessment of the proponent's methodology in assessing environmental effects.

PANEL REVIEWS AT A GLANCE

Number completed:	5
Number still active (mid-1999):	4
Length to complete:	158 – 791 days*
Days of panel hearings:	7 – 32 days
Public submissions:	20 – 573
Participant funding awards:	avg. $10,000 largest: $80,000

* Starting point used for calculating days differs depending on whether the review is federal only or joint with another jurisdiction.

Mediation

To date, a formal mediation process, as defined in the Act, has not been used in an environmental assessment. However, mediation and other alternate dispute resolution methods have been used by the Agency, responsible authorities and interested parties on an informal basis in several environmental assessments.

For example, before the Act came into force, the Agency conducted mediation on a proposed small crafts harbour in the Queen Charlotte Islands of British Columbia. The Agency also applied mediation on a proposed hydro-electric project, when a facilitator was appointed to mediate the resolution of the main issues outstanding: the aesthetics of the station and the possible negative effects of a reduced water flow on local tourism. While mediation did not resolve all the issues in these two cases, panel reviews were not required in either instance.

In 1999, with assistance from the Dispute Resolution Fund of the Department of Justice, the Agency developed and implemented an awareness and training program to improve the ability of the Agency and federal departments to resolve disputes in the environmental assessment process. While not specifically focused on the Act's mediation provisions, the awareness and training program helps federal environmental assessment managers recognize opportunities for using alternate dispute resolution approaches, and increase their knowledge and skills in this emerging area.

In the spring of 1999, the Agency conducted a series of awareness training sessions across Canada on alternative dispute resolution. Three supporting reports have been prepared, documenting the state of practice in alternative dispute resolution in environmental assessment, identifying criteria to help determine when the process may be appropriate and identifying how disputes may be avoided through better public consultation practices.

TABLE 2 PANELS COMPLETED UNDER THE ACT

NAME	LOCATION	JOINT/FEDERAL
Express Pipeline (Responsible Authorities: National Energy Board, Fisheries and Oceans Canada)	Alberta	Joint with the National Energy Board
Little Bow-Highwood Diversion Project (Phase I) (Responsible Authority: Fisheries and Oceans Canada)	Alberta	Joint with Alberta's Natural Resources Conservation Board
Sable Gas Project (Responsible Authorities: National Energy Board, Fisheries and Oceans Canada)	Nova Scotia	Joint with the Nova Scotia Department of Natural Resources and Department of Environment, the National Energy Board and the Canada-Nova Scotia Offshore Petroleum Board.
Terra Nova (Responsible Authorities: Canada-Newfoundland Offshore Petroleum Board, Fisheries and Oceans Canada)	Newfoundland	Joint with the Government of Newfoundland and the Canada-Newfoundland Offshore Petroleum Board
Voisey's Bay Mineral Development (Responsible Authority: Fisheries and Oceans Canada)	Labrador	Joint with the Government of Newfoundland and Labrador, the Labrador Inuit Association and the Innu Nation

TABLE 3 PANELS UNDER WAY UNDER THE ACT

NAME	LOCATION	JOINT/FEDERAL
Cheviot Mine (Responsible Authority: Fisheries and Oceans Canada)	Alberta	Joint with the Alberta Energy Utilities Board
Little Bow – Highwood Diversion Project (Phase II) (Responsible Authority: Fisheries and Oceans Canada)	Alberta	Joint with Alberta's Natural Resources Conservation Board
Millennium West/Lake Erie Crossing Pipeline (Responsible Authorities: National Energy Board, Fisheries and Oceans Canada)	Ontario	Joint with the National Energy Board
Red Hill Creek (Responsible Authority: Fisheries and Oceans Canada)	Ontario	Federal

6. The Challenges Ahead

Experience with the *Canadian Environmental Assessment Act* over the past five years has identified areas where the process could be strengthened. At the same time, the Act's core values have led to important contributions to decision making and sustainable development.

The Core Values of the Act

Many features of the Act continue to work well and can form the foundation of a revitalized environmental assessment process in Canada. Efforts to strengthen the Act can build on the important core values and objectives that are the foundation of the Act, and that have contributed to the quality of life of Canadians over the last five years.

Promoting sustainable development and sound decision making

The Act has helped achieve sustainable development through the promotion of sound economic development while reducing adverse effects on our environment. Careful consideration of potential adverse environmental effects during the planning stages of projects has introduced mitigation measures that have promoted economic development while ensuring environmental protection. For example, in the review of a nickel mine proposal, the federal environmental assessment involved Aboriginal groups throughout the process, and resulted in a carefully designed tailings storage area, the protection of fish and wildlife habitat, and the creation of job opportunities in an economically depressed area. Avoidance of impacts through the consideration of alternatives is one of the least expensive and most effective ways of ensuring sustainability. Cost savings to proponents have included the avoidance of mitigation measures, lower risk and the need for fewer regulatory permits. The Act has contributed to such benefits through its guidelines and operational policy statements. These provide proponents and responsible authorities with direction on how to investigate, report on and evaluate alternatives.

Ensuring opportunities for public participation

The Act has helped provide concerned individuals and organizations with opportunities to influence decisions on projects affecting them. Public consultation during the preparation of comprehensive studies has become standard practice, though it is not mandatory. As a result, improvements have been made in projects, particularly by the addition of mitigation measures. For example, public concerns about a proposed river channel project resulted in the additional requirement to identify and implement mitigation measures to protect the endangered piping plover and the Gulf of Saint Lawrence aster.

In addition, the procedures and guidelines for the Participant Funding Program have been revised to improve the efficiency and effectiveness of public participation in panel reviews.

The requirement to maintain a public registry has improved public access to relevant information about projects that may affect the public directly. It also permits the public to learn about the types of development projects assessed under the *Projects Outside Canada Environmental Assessment Regulations.*

The principle of one project, one assessment

The Act has helped to eliminate unproductive overlap and duplication through joint review with other jurisdictions. The harmonization agreements with provinces, the federal co-ordination regulations and the strengthened role of the Agency's regional offices have reduced process duplication and improved co-operation among the various participants. Through this approach, for example, a single environmental assessment report can meet the requirements of different jurisdictions. Challenges to further improve harmonization remain.

The principle of self-assessment

The principle of self-assessment underlies much of the Act and the federal environmental assessment process. It has had two important benefits. First, it has made the environment the responsibility of every department in the federal government in a manner not possible if a central agency alone were responsible for environmental assessment. Each department has had to ensure that values and practices sensitive to environmental matters are in place. Each department can be held accountable for how its decisions affect the environment. This trend toward self-assessment has been reinforced by recent

requirements for departments to develop their own environmental management system and sustainable development strategy.

Self-assessment also has promoted early consideration of environmental issues in the planning process and the efficient allocation of public funds. The responsible department is almost always closest to the proposed project, in terms of knowing when the project is being proposed and the effects it might have. By contrast, it would be extremely costly to charge a central agency with managing the assessments of thousands of projects every year. At the same time, the principle of self-assessment makes it more difficult to co-ordinate efforts when more than one federal department triggers the same project under the Act. It has also proven a challenge to identify early on projects in the federal environmental assessment process that may be subject to provincial assessment processes under a harmonized review. As well, self-assessment has resulted in some inconsistency in environmental assessments across the federal government.

THE BENEFITS OF ENVIRONMENTAL ASSESSMENT: THE INTERNATIONAL EXPERIENCE

A major recent international review of the effectiveness of environmental assessment practices identified the major benefits of environmental assessment:

- early withdrawal or pre-emption of unsound proposals;
- "green check" or legitimization for well-founded proposals;
- "last-recourse" stop to proposals found to be environmentally unacceptable; and
- improvements to project proposals in the form of:
  - relocation to more appropriate sites;
  - selection of best practicable environmental option;
  - redesign and rescheduling of projects to minimize or avoid environmental impacts; and
  - mitigation of unavoidable impacts through rehabilitation and compensation.

(Source: Sadler, 1996: 54)

BENEFITS IDENTIFIED: MONITORING STUDY

In 1998-99, the Agency undertook a major monitoring program to identify the societal benefits generated by the Act and the costs and benefits of the Act to industry. The monitoring program, based on 20 detailed case studies of large-scale screenings, comprehensive studies and panel reviews, identified and classified a range of benefits driven by the Act.

The study concluded that the Act has:

- helped various stakeholders realize efficiencies while co-ordinating assessment/regulatory requirements during planning;
- improved the quality of the assessment through guidelines and operational policy statements; and
- realized sustainable development benefits through avoidance/mitigation measures which minimize or eliminate adverse impacts associated with project implementation.

None of the proponents involved in the 20 case studies considered assessment costs to be a significant business impact.

(Source: Hagler, Bailly, 1999)

Concerns of Canadians

Individuals and organizations involved in environmental assessment have provided important perspectives on key challenges.

Canadians have gained a great deal of experience with the federal environmental assessment process in the past five years. The Agency has sought to understand this experience and respond to emerging issues through a variety of mechanisms:

- the Regulatory Advisory Committee, which represents a wide cross section of stakeholder interests;
- the federal Senior Management Committee on Environmental Assessment, which collectively identifies and co-ordinates responses to federal issues;
- the Regional Environmental Assessment Committees, which bring forward and discuss regional perspectives on federal and provincial issues;
- the environmental assessment administrators group, which brings together environmental assessment officials from the federal, provincial and territorial governments;
- informal meetings with various groups and organizations;
- training and guidance materials; and
- numerous background studies and surveys which have addressed specific issues over the years.

Through these approaches, all participants in the process – federal departments, other levels of government, business and industry, public interest groups, Aboriginal people – have expressed their views about the process and identified opportunities for strengthening it. While perspectives and proposed solutions may vary considerably, there is general agreement on the primary challenges to a revitalized federal environmental assessment process.

These consultations and background studies have consistently identified the following key issues:

- the limited time and resources available to conduct high-quality environmental assessments;
- the need to conduct assessments for so many projects, even small routine projects known to have no significant environmental effects;
- the complexity of the process;
- the need for harmonization of federal, provincial and Aboriginal assessment processes;
- uncertainty over the role of environmental assessment – whether it is merely a part of a process for granting permits or a more dynamic tool that can contribute to decision making and sustainable development;
- the number of government participants in the process, with the resulting potential for overlap and duplication;
- the lack of consistency in the process, both across federal departments and across different jurisdictions;
- for larger and more complex projects, the length, cost and unpredictable nature of the federal environmental process which may result in delays, cost increases, litigation and impacts on competitiveness;
- the impact of, and prospect for, litigation during the process;
- the role of the Minister of the Environment in the process;
- the lack.of the follow-up and monitoring that could promote higher quality environmental assessments;
- methodological challenges, such as scoping and the determination of cumulative environmental effects;

- the exclusion of some projects (e.g., federally funded projects on Indian reserve lands) from the federal environmental assessment process;
- the limited opportunities for meaningful public involvement, particularly in screenings and comprehensive studies;
- the potential to conduct regional or area-wide assessments under the Act;
- the incorporation of strategic environmental assessment in the Act;
- the challenge of involving Aboriginal people and the First Nations in the environmental assessment process in a way they deem meaningful; and
- the difficulties in accessing timely information on federal environmental assessments.

Improving the Federal Environmental Assessment Process

Canadians raise important and legitimate concerns that must be addressed through the Five Year Review consultations. Collectively, these concerns reflect a need to improve and refine the federal environmental assessment process.

The issues can be grouped into three major themes.

1. Making the process more predictable, consistent and timely. (See Chapter 7.)
2. Improving the quality of environmental assessments. (See Chapter 8.)
3. Strengthening opportunities for public participation. (See Chapter 9.)

Making the process more predictable, consistent and timely

Experience with the Act's operations over the past five years raises questions about predictability, consistency and timeliness. Issues include the lack of co-ordination and harmonization within and across jurisdictions, project delays and cost implications, and inconsistency in interpretations and applications. These issues, in turn, raise questions about the appropriate use of scarce resources, consistency and fairness in application, the quality of assessments and the contribution environmental assessment makes to decision making and sustainable development.

There is a sense among some groups that the Act is unnecessarily complex and time consuming, that there is a great deal of uncertainty involved with its implementation, and that too many players are involved.

More certainty and consistency can result in a more effective and efficient process. The benefits of introducing greater certainty, consistency and timeliness will be seen in:

- savings in cost and time to industry, government and other stakeholders;
- reductions in costly legal challenges for all sides; and
- an improved climate for private sector investment.

Chapter 7 explores how bringing greater predictability, consistency and timeliness to the process could be addressed.

Improving the quality of environmental assessments

The quality of assessments under the federal environmental assessment process has been weakened by uncertainty regarding roles, responsibilities and accountability. This has undermined both the quality of assessments and the overall sense of trust and confidence in decisions arising from the process. There is an opportunity to clarify responsibilities, relationships and outcomes in the process.

Better quality environmental assessments can mean better decisions and greater confidence in those decisions. This can lead to important on-the-ground benefits and broader gains in terms of public understanding and acceptance. For example, quality environmental assessments can contribute to:

- better decision making that is more environmentally sound and contributes to sustainable development;
- clearer lines of accountability; and
- a more open process that can build public trust and confidence.

The range of options available to address these issues is addressed in more detail in Chapter 8.

Strengthening opportunities for public participation

Public participation remains a fundamental objective of the Act. Important questions have been raised about the level of public involvement in self-directed assessments under the Act, about the lack of transparency at key decision-making points of the process and about the availability of timely information on environmental assessments.

Strengthening opportunities for public participation can lead to important benefits for all participants in the process. For example, quality environmental assessments can contribute to:

- better decisions, because proponents and decision makers are provided with better information about public concerns and priorities; and
- more openness and transparency, which can build public trust, confidence and acceptability in both the process and the decisions arising from the process.

Chapter 9 presents details on options for addressing public participation.

7. Making the Process More Predictable, Consistent and Timely

Opportunities for bringing a greater measure of predictability, consistency and timeliness to an improved federal environmental assessment process are considered with respect to:

- co-ordination and harmonization;
- assessments of projects with known/inconsequential effects;
- timeliness;
- scoping;
- the application of the Act to projects outside Canada; and
- the discretionary powers of the Minister of Environment.

7.1 Co-ordination and harmonization

The issues

Federal co-ordination

Often, more than one federal department or agency has a decision-making role on a proposed project undergoing an assessment. Other federal departments may have no decisions to make, but may have a responsibility to identify problems, or offer expert advice. And, in certain land claim settlement areas, two federal environmental assessment processes may be applied to the same project. In these examples, co-ordination of the federal bodies involved in the process is essential to a timely and efficient environmental assessment.

One major question about the efficiency of the federal process has been the lack of co-ordination among federal departments, in particular, the potential for "multiple responsible authorities" – the involvement of several federal departments on the same assessment. A related concern has been the challenge in designating a "lead responsible authority" that would take on a "single window" co-ordinating role for the federal government. Some departments may also be reluctant to assume the lead role because of the additional resource implications involved, and because of the responsibility for monitoring follow-up measures and activities in areas outside their own departmental mandates.

Despite the Agency's advice and federal co-ordination regulations, co-ordination among multiple responsible authorities has proven difficult and time consuming. For example, the ongoing monitoring program conducted by the Agency identified several cases in which difficulties in determining the lead federal responsible authority led to delays in project start-up, including in a joint panel review of a water diversion project in Alberta.

There may be several reasons for these difficulties in co-ordination, including:

- a lack of awareness by the proponents of the new regulations;
- a lack of uniformity in information requirements across departments;
- timing implications of different triggers under the Act;
- scheduling set out in the regulations that is difficult to meet with available resources;
- a reluctance by departments to become lead responsible authority in situations where they would later become responsible for follow-up and/or monitoring in areas falling under the mandates of other departments; and
- confusion on some complex projects as to which department should be the lead responsible authority.

Substitution of other federal review processes

Under the Act, the Minister of the Environment has the discretionary power to approve the substitution of another federal review process for an environmental assessment by a review panel. These substituted processes could include, for example, the review process of the National Energy Board or of a body established under a land claims agreement. The Act also provides basic pre-conditions for substitution and for the development of criteria for the Minister to consider before determining whether to approve a request for substitution.

Substitution for other processes could bring greater predictability and timeliness to the reviews of particular projects, and improve efficiency by using other processes and reducing the need to establish a review panel.

To date, no such substitutions have been made. There may be several barriers to the use of substituted processes. Most important, a wide range of factors must be accommodated if another process is to replace a panel review – from the scope of factors to be addressed in the review, to participant funding and the provision of information through a public registry.

Anticipating requests for substitution, the Agency developed draft criteria that set out the requirements the Minister would consider before determining whether a federal process would be approved for substitution.

Discussions are continuing with the National Energy Board, and with the Environmental Impact Review Board under the *Western Arctic (Inuvialuit) Claims Settlement Act*, to adapt the criteria into draft substitution agreements with these review bodies. The agreements outline the process requirements and steps each party would follow should either request such a substitution. In situations where both parties deem substitution to be appropriate, project-specific agreements would be developed on a case-by-case basis.

Harmonization of federal and Aboriginal environmental assessments

Another important co-ordinating element of environmental assessment relates to the emerging land claims and land management agreements with Aboriginal peoples.

The federal government has been engaged with Aboriginal groups in negotiating various land claims and land management agreements. These negotiations identified the need to harmonize the federal environmental assessment process and the environmental assessment processes to be established by the agreements. There is a need to accommodate both the inherent right to self-government of Aboriginal people and the obligations of the federal government under the Constitution.

In these agreements, the federal government asks for a clear commitment between the parties to reduce overlap and duplication of environmental assessment processes applicable to a project through the negotiation of harmonization agreements. As with federal-provincial harmonization, these agreements are intended to promote the efficient use of resources by all jurisdictions.

Federal-provincial harmonization

Under the Constitution, the federal and provincial governments share responsibility for environmental management, including assessment.

In the past, uncertainty about these shared responsibilities has been a major issue, even conflict, in federal-provincial relations. The chief concern was that the application of two or more environmental assessment processes to a single project might create overlap, duplication and conflicting efforts by proponents, the public and government agencies. To compound the problem, while most provinces already had a single point of contact for environmental assessment, the federal principle of self-assessment meant that proponents were required to deal with several federal departments on a single proposal. The result of co-ordinating provincial processes with a process involving several federal departments could be conflicting or ambiguous decisions, greater uncertainty, and added costs and delays to the project. For example, the Agency's ongoing monitoring program identified a case in which the provincial and federal environmental assessments of a proposed copper mine were not sufficiently synchronized, resulting in project start-up delays.

Based on the Agency's own analysis and an independent study, it appears that between 80 and 100 projects a year are subject to both federal and provincial environmental assessments under their respective legislation. While this represents a small percentage of the projects reviewed under the Act, these projects tend to have a high profile or involve public concerns. More projects are examined by provinces under other, non-environmental assessment legislation. Some of these projects may also be subject to the Act and to federal environmental assessment.

The Act provides the Minister of the Environment with opportunities to enter into agreements with other jurisdictions to better harmonize environmental assessment approaches and reduce the potential for any unproductive overlap, duplication and conflict.

Federal-provincial issues relating to environmental assessment have evolved significantly in the last five years. In the past, environmental assessment has been the subject of constitutional litigation and intergovernmental conflict. Overlap between federal and provincial environmental processes has been among the principal complaints of industry regarding environmental regulation in Canada. Provinces became increasingly frustrated with the lack of timely participation of federal players in joint assessments, and found federal information requirements to be sometimes inconsistent.

Federal and provincial governments have worked hard to identify unproductive overlap and duplication, and to address the attendant challenges by moving toward greater harmonization of assessment procedures. In 1998, the Canadian Council of Ministers of the Environment (with the exception of Quebec) signed the *Canada-Wide Accord on Environmental Harmonization and the Sub-agreement on Environmental Assessment.* The accord is a framework agreement that establishes the common vision, objectives and principles that will govern the partnership among jurisdictions. The accord and the environmental assessment and other sub-agreements will be reviewed in 2000 by the Canadian Council of Ministers of the Environment.

The *Sub-agreement on Environmental Assessment* promotes the effective application of environmental assessment when two or more governments are required, by law, to assess the same proposed project. It includes provisions for shared principles, common information elements, a defined series of assessment stages, and a provision for a single assessment and public hearing process. The sub-agreement will be implemented through bilateral agreements between the federal government and individual provinces. To date, bilateral agreements have been signed with British Columbia, Alberta and Saskatchewan, and negotiations are under way to develop agreements with other provinces.

By establishing regional offices, the Agency has also promoted greater informal co-operation and co-ordination among federal departments and between federal and provincial departments.

Through these initiatives, work is under way on a number of outstanding issues related to harmonization:

- *Timing:* Critical information for some projects may not be available until late in the project planning stage. This can make it difficult to make an early determination as to whether there will be a federal Law List trigger. Even though the courts have suggested that prospective decision makers need not wait for a formal application before engaging in the environmental assessment process, some federal departments have been reluctant to participate in an environmental assessment until a formal application has been made triggering the Act. There are also some concerns with respect to the level of information detail. Some processes focus more on the planning stage, requiring a planning level of detail, and result in an "approval in principle." Further detail is supplied in subsequent licensing stages. Some federal departments require more than planning-level detail to satisfy their regulatory requirements at the environmental assessment stage. Thus, a conflict arises over the need for differing levels of detail. This can result in additional time requirements and lead to frustration on the part of the others involved – federal departments, provincial agencies and proponents.
- *Co-ordination and accountability:* Co-ordination and co-operation are seen as vital to ensuring a "one window" approach to dealing with projects requiring federal and provincial review. However, some provinces have noted that there is often a lack of co-ordination among federal responsible authorities, which can result in delays and, in some cases, conflicting federal positions. To strengthen federal accountability,

provinces have suggested that strong consideration be given to enhancing the role and responsibilities of the Agency to ensure greater consistency of approach and improved efficiencies.

- *Scope of project/scope of assessment:* Federal and provincial environmental assessment processes often differ in their approach to the scope of a project and scope of the assessment. These differences have led to difficulties in co-ordinating the environmental assessments, making regulatory decisions and achieving the objective of a single assessment for each project.
- *Co-ordination of public participation:* The variation and timing of public participation opportunities under the Act and provincial legislation also affect federal-provincial co-operation. The differences in when, why and how the federal and provincial processes involve the public creates challenges with respect to meeting the broader objectives of effective and timely co-ordination of federal and provincial processes.

Options for consideration

Many of the challenges to more effective co-ordination and harmonization are being effectively addressed through the federal-provincial bilateral agreements. However, more could be done within the federal environmental assessment process to improve the co-ordination of federal authorities and harmonization of federal and provincial environmental assessment processes. For example, the following options could be considered.

1. **Add the concept of "lead responsible authority" to the Act**
   A "lead responsible authority" could be added to the Act to provide greater consistency by reducing the potential for difficulties in federal co-ordination and federal-provincial harmonization. In addition, the Agency could be given the power to designate a lead responsible authority in cases where departments cannot agree on a choice. This option could address effectively the issues of co-ordination of federal departments, of co-ordination of public participation and of determination of the scope of the assessment. There also may be a need for the lead responsible authority to assign responsibility for essential follow-up and monitoring functions in cases where the subject area is outside the mandate of the lead responsible authority.

2. **Enhance the co-ordinating role of the Agency**
   The Agency could be designated temporarily as the assessment co-ordinator in cases of multiple responsible authorities where no lead is otherwise designated. This would be an alternative (or possibly, an addition) to the "Agency as arbitrator" approach as suggested under the previous option. This could be used to speed up the triggering of a project at the planning stage, especially when the expected trigger is an item on the Law List that is usually confronted at a later stage in the project cycle. This would be a temporary measure only, until a lead responsible authority is identified when that department triggers the Act.

   The intent of the temporary designation would be to facilitate timely co-ordination and sharing of information and assessment requirements for all federal authorities, and to provide an early contact point for provinces and proponents. Under this measure, the current discretionary powers of the responsible authorities to determine scope of project and of assessment would not be changed.

3. **Amend the Act to identify a single responsible authority**
   Another possible option would be an amendment to the Act to require that one, and only one, responsible authority be identified for each project. This would simplify the co-ordination of information requirements for the proponent and, by avoiding the potential for multiple responsible authorities, would eliminate overlap and duplication among federal departments. The option of a single responsible authority would simplify co-ordination and harmonization with other jurisdictions or other processes.

The responsible authority would have broad responsibilities for including a consideration of the interests and requirements of all other federal departments in its assessment. All other federal departments with interests in the project would be involved as expert departments during the assessment, and would retain their decision-making responsibilities, including licence approvals and permit issuance.

This could be introduced in conjunction with Option 2, with the Agency possibly having a role in identifying the single responsible authority when departments cannot agree on a choice.

4. **Designate the Agency as the "single window" for joint federal-provincial reviews.** When a provincial environmental assessment process is triggered in addition to the Act, the Agency could be designated as the "single window" for the duration of the review. This role would see the Agency co-ordinating information gathering from all involved federal government departments. Federal departments would retain their usual responsibilities and all roles except for information co-ordination. It would not imply additional powers for the Agency, but only an additional co-ordinating role in harmonizing the review with that of the other jurisdiction.

7.2 Assessments of projects with known/inconsequential effects

The issues

Small-scale, routine projects

Nearly 6,000 project proposals undergo an environmental assessment under the Act every year. A consistent issue among many groups has been whether too many of these assessments have been required for smaller scale, routine projects known to have inconsequential environmental effects or in which federal involvement is minimal. For example, some projects undergoing an assessment have been routine undertakings for which the environmental effects were known in advance to be insignificant (e.g., resurfacing existing highways, funding for youth community service projects). Other assessments, particularly those triggered by the funding and land interest triggers, have been required even though the federal contribution was minimal. Still others (e.g., permit or licence renewals for existing facilities) may be repetitive in nature or include elements that are repetitive or not unique to a specific project.

This pattern can affect the overall efficiency and effectiveness of the Act. By requiring federal departments and agencies to apply scarce resources to assessments that, in the end, contribute little if anything to the decision, the Act's trigger provisions may be diverting resources away from the assessment of other projects that do raise legitimate environmental issues. There are suggestions, too, that conducting so many environmental assessments on smaller projects affects the overall quality of the assessments. Departments have also questioned whether the resources required for environmental assessment may be diverted away from other activities, such as enforcement of other legislation or regulations.

There are many challenges in attempting to identify small-scale projects that might not merit individual environmental assessments. There is no simple checklist or criterion that can identify such projects. Some projects that are small in physical size or financial cost may have significant environmental impacts, depending on their location and other circumstances, either by themselves or in combination with successive or repetitive projects. Some larger projects, located in less environmentally sensitive areas, might have negligible impacts. The real concern is whether smaller, routine projects still are planned and implemented so as to avoid or reduce adverse effects.

Class screenings

The class screening has the potential to reduce the time and resources needed to conduct screenings on many smaller scale routine projects with known effects. However, there has been very little take-up of this mechanism by federal departments, with only two class screenings having been declared.

There may be several reasons for this. For one, it is a new approach to environmental assessment at the federal level, and the lack of familiarity

may simply be a short-term barrier. A more serious hurdle, however, may be that responsible authorities do not see the benefit of obtaining a class screening designation, particularly given the process involved in obtaining an approved model class screening report. Unlike a regular screening, which is strictly a self-assessment process, class screening involves an element of mandatory public review and comment, and mandatory Agency review. As well, the requirement to modify a class screening report to conform to the circumstances of each project may limit the potential for time savings in future screenings.

THE CLASS SCREENING APPROVAL PROCESS

The process by which a model class screening report (MCSR) is approved and declared may be a major barrier to its more frequent use. A responsible authority must:

- define the class of projects to which the MCSR will apply;
- provide a generic description of the projects in that class;
- identify all the responsible authorities that might be involved in such projects and the specific "triggers" pursuant to s. 5 of the Act; and
- describe the environment typically affected by that class of projects.

The MCSR must also contain a description of each element of the screening process, including:

- the type and range of environmental effects typically associated with that class of projects, including cumulative effects;
- the standard mitigation measures used, and their technical and economic feasibility;
- criteria and standards for determining the significance of the environmental effects;
- the factors to be considered in the assessment;
- the factors and methods to be used in assessing cumulative environmental effects and effects of malfunctions and accidents; and
- relevant conclusions and recommendations pertaining to project screenings in that class.

Also required is an outline of how the project screenings are to be conducted, including consideration of any local circumstances.

The Act then requires the responsible authority to submit the MCSR to the Agency for approval and declaration as a class screening report. The Agency must publish a notice in the *Canada Gazette* inviting comments from the public on the appropriateness of using the submitted MCSR. If, following consideration of any comments received, the Agency approves the MCSR, it must publish the declaration in the *Canada Gazette* and make the MCSR available to the public.

Options for consideration

In addressing the important question of assessments of smaller scale, routine projects with known and inconsequential effects, the following options are worth consideration.

1. **Allow federal departments to exclude small, routine projects from the Act**
   Federal departments are often in the best position to determine whether or not a project merits an environmental assessment. Federal departments could be given the authority, for all triggered projects, to determine the projects requiring an environmental assessment. Projects deemed to have little or no potential for environmental impacts could be excluded from further assessment following an administratively simple prescreening. Criteria for excluding projects could include size of project, past experience with similar projects, lack of vulnerability of the receiving environment, anticipated lack of significant impacts and no public concern. Possible mechanisms for departments to use in making their determinations might be the development of standard operating procedures, codes of practice or the application of strategic environmental assessment.

   This option could include a provision giving the Minister of the Environment authority to require an environmental assessment of any triggered project, based on public concern or advice from other federal departments.

2. **Focus attention on important projects through a "minimum federal involvement" regulation**
   A "minimum federal involvement" regulation would exclude projects where the contribution of the responsible authority to the project is minimal. The Act allows for the development on a minimum federal involvement regulation, but the wording of the regulation-making authority limits its application, and has made it impossible to develop a workable regulation.

   This option would require agreement with all potential responsible authorities on criteria for determining when their involvement in enabling a project to proceed is "minimal." Precise, quantitative and unambiguous criteria would have to be devised for each of the three "non-proponent" triggers in s. 5 of the Act (financial, land transfer and regulatory).

3. **Expand the Exclusion List**
   The *Exclusion List Regulations* could be expanded to include a number of smaller, routine project categories known to have minimal environmental effects. This could involve identifying categories of projects (undertakings relating to physical works) that can be demonstrated (to the satisfaction of the Governor in Council) to have no potential to cause significant adverse environmental effects.

4. **Streamline procedures related to class screenings**
   Procedures for obtaining a designation of a model class screening report could be streamlined to encourage greater use of this tool. For example, the requirement for publishing the proposed model report in the *Canada Gazette* for public review and comment before official designation could be streamlined or even deleted. Instead, register the class screening in the Federal Environmental Assessment Index, following suitable public consultation.

   In addition, the requirement to complete a project-specific report for each use of the model class screening report could be removed.

7.3 Timeliness

The issues

There are concerns about the timeliness of the federal environmental assessment process – about the timing of the Act's triggering provisions and uncertainty in scheduling assessments. For example, some groups have suggested that, given the timing of application of some of the

Act's triggering provisions, the potential for an environmental assessment to serve as a planning tool at the earliest stages has not been realized. Of special importance is when the triggers "kick in" – the timing of the application of the Act – in relation to the progress of the project's development and, in some cases, the provincial review. The Agency's Compliance Monitoring Review indicated that more than one third of the screenings sampled were initiated at or toward the end of the planning process. Several departments involved in the review indicated that a significant number of their screenings are conducted too late in the planning process for the environmental assessment to influence the project. For example, funding approval may not be formally applied until the final phases of the project's design and development.

Early initiation of the environmental assessment can allow for better coordination with other jurisdictions. An example of this was the screening done of a proposed food park on 57 acres of waterfront property, where the early triggering by the federal responsible authority facilitated an effective co-operative and co-ordinated approach with the provincial authorities.

With the Law List trigger, applications for permits or approvals often initiate an environmental assessment after other planning activities of the proponent have taken place. In an offshore oil case study from the ongoing monitoring program, for example, the late decision of the proponent to carry out ocean dumping activities resulted in the requirement for the development of a screening study after a panel review had already been conducted of the same project.

As part of their sustainable development strategies, some departments have modified their operational procedures to better accommodate the Act. The proactive approach of completing strategic environmental assessment during policy development facilitates the subsequent triggering and efficient implementation of project environmental assessment.

Another concern with respect to timing is the uncertain and largely unpredictable scheduling of comprehensive studies, which can result in delays and cost increases.

Options for consideration

In seeking to improve the timeliness, predictability and consistency of the federal environmental assessment process, the following directions could be considered.

1. **Promote environmental assessment as a planning tool**
   Better advantage could be taken of the potential for environmental assessment to contribute to planning and decision making. Departments could examine their policies to strengthen the link between strategic environmental assessment and project assessment, or modify their operational procedures to accommodate the Act. This has already been done by some departments that trigger an environmental assessment at the planning stage of a project, long before their departmental licensing procedures are initiated. As part of their sustainable development strategies, other departments could follow this example and assume the responsibility of looking internally at ways to trigger the Act at a more appropriate time in the project cycle.

   Information requirements for the environmental assessment could be modified to require a planning level detail, rather than the more specific detail often required for licensing approvals. Under this approach, departments would be expected to make environmental assessment decisions without permit-level information.

2. **Develop time lines for comprehensive studies**
   As has been done for panel reviews, time lines could be developed for comprehensive studies, providing scheduling targets for steps in the process under the control of the responsible authority and Agency. The time lines would likely be in the form of guidelines, rather than regulation, with the flexibility to respond to project-specific circumstances and to harmonize with provincial time lines. Time lines could introduce a greater measure of certainty and predictability for all participants.

3. **Adopt an "automatically in" approach to the Law List trigger**
   To promote the use of environmental assessment in the early planning stages of a project, federal departments could adopt an "automatically in" approach to the Law List trigger for federal-only assessments. Under this approach, a federal authority responsible for a particular Law List trigger would act as if an environmental assessment were required for any project proposal that could be subject to that trigger. The department's involvement in the assessment would continue unless it determined that the project would not be subject to that specific Law List trigger.

   This option is consistent with bilateral harmonization agreements that have been (or are soon to be) signed with provinces. In these agreements, both jurisdictions agree to notify each other as early as possible, on determining whether they have or are likely to have an environmental assessment responsibility for a project.

   This approach could be extended within the federal government, either through legislative change or policy development, and would apply to federal-only assessments.

7.4 Scoping

The issues

Scoping is a key component of environmental assessment. It establishes, early on in the process, the boundaries of the environmental assessment and focuses the assessment on the relevant issues, contributing to the overall effectiveness and efficiency of the process. There are three aspects to scoping.

- *Scope of the project* involves the identification of those aspects of a development or activity whose interactions with the environment are to be assessed. The Act provides a specific definition of a project and includes provisions to assist in identifying the project to be assessed.
- *Scope of the assessment* concerns the identification of those components of the environment that may be affected by or otherwise interact with the project. Scope of the assessment also includes determining the other aspects of environmental assessment planning (e.g., purpose of the project, need for the project, alternatives to the project, alternative means of carrying out the project and mitigation measures) to be included in the environmental assessment.
- *Scope of the factors* identifies the appropriate geographical, time extent and depth of the analysis.

Scoping has emerged as one of the most pressing methodological challenges under the Act, and a source of uncertainty and unpredictability in the overall process. For example, it involves subjective judgments about the spatial and temporal boundaries of a project. With projects involving both federal and provincial jurisdictions, the provinces may view the scoping boundaries established by the federal party as an intrusion into provincial jurisdiction.

Several recent court challenges and decisions focused on the conduct of scoping under the Act. Questions have been raised about the application by responsible authorities of their discretion in determining the scope of the project, the scope of the assessment or the scope of the factors. The court rulings may help clarify the question about the parameters within which the discretion of responsible authorities can reasonably be applied or, alternatively, other means outlined below may be appropriate to assist in clarification.

Options for consideration

Environmental assessment practitioners generally consider the most effective approach for resolving scoping issues to be the practice of high-quality environmental assessment. To assist practitioners, the following options could be considered.

1. **Provide clear definition in the Act**
   The Act could be amended to clarify the definition of terms relating to scoping and to provide greater consistency and predictability in the assessment of effects. For example, the definition of "project" could clarify the relationship between a "physical work" and "undertakings in relation to a physical work." Similarly, the definition of "environmental effect" could provide greater clarity of the undertakings that need to be

considered, and address the possible inclusion of socio-economic and cultural effects. In developing any new definition, however, care would need to be taken to ensure that any new definition does not intrude into other jurisdictions, nor undermine the principle of self-assessment.

2. **Support practitioner experience and training**
The Agency could provide additional support to practitioners on scoping, particularly in light of jurisdictional issues. For example, the Agency could focus on:

- encouraging responsible authorities to participate in assessments early;
- facilitating scoping meetings or workshops when several responsible authorities are involved;
- using the model of bilateral agreements where the broadest scope of assessment is adopted to meet the needs of both jurisdictions; and
- using a Canadian Standards Association standard or some other type of best practice policy to assist practitioners in defining how to scope projects and the assessment.

7.5 Application of the Act to projects outside Canada

The issues

In carrying out environmental assessments for projects outside Canada, federal government bodies, such as the Canadian International Development Agency and the Department of Foreign Affairs and International Trade, have a long-standing interest in ensuring that their assessments meet international standards and are responsive to international sensitivities. *The Projects Outside Canada Environmental Assessment Regulations*, which came into effect in November 1996, were introduced to ensure that environmental assessment of projects outside Canada complies with the spirit and principles of the Act. The regulations adapt the process set out in the Act to better respect the sovereignty of foreign states, to ensure that environmental assessments are conducted in accordance with international law and to allow the flexibility to meet various conditions in foreign states.

However, despite efforts to adapt the process set out in the Act, several important challenges have emerged.

- The Act's triggering provisions were developed for use in Canada and are not always appropriate for situations outside Canada. For example, some international projects with the potential for significant impacts are not triggered under the Act. Conversely, environmental assessments are required for some projects that have only minimal impact or for which Canada is only a minor participant.
- The funding trigger is the most frequently used for projects outside Canada. Its language and the definition of key terms, such as "project" and "proponent" have led to difficulty in determining whether an assessment should be conducted.
- As with projects inside Canada, many environmental assessments for projects outside Canada are triggered too late in the process for the assessment to make a meaningful contribution to project planning.
- Some foreign countries view the request to conduct an environmental assessment under Canadian legislation as an infringement of their sovereignty, even though the assessment is the result of a request for financial assistance from Canada to allow the project to be carried out. In these instances, Canada's approach has been viewed as paternalistic and a challenge to the partner country's right to manage its resources and identify its needs.
- Sometimes, there is a lack of adequate, accessible information and authority to scope the project, assess cumulative effects or ensure that mitigation and follow-up occur as required without infringing on the sovereignty of the local country.
- In some foreign countries in which Canadian aid organizations operate, public participation is not as valued as in Canada. Public participation is prevented or severely

restricted by the lack of a tradition of public consultation, lack of adequate literacy or social limits on participation, such as gender roles in the society.

- There is uncertainty regarding the appropriate location of the public registry for a project outside Canada. For example, should it be located at the project site, in Canada or at both locations?

Options for consideration

In addressing the emerging concerns with regulations governing projects outside Canada, and trying to bring greater predictability and consistency to the federal environmental assessment process, the following initiatives could be considered.

1. **Amend the Act's regulation-making provisions and the existing regulation governing projects outside Canada**
   The regulation could be amended to make it more appropriate for the types of projects done outside Canada and the conditions in which they are conducted. For example, the regulation-making provisions in the Act could be expanded to allow greater flexibility to vary and exclude the domestic environmental assessment regime, or to accommodate projects triggered by official development assistance. Under this approach, the triggers of the Act and requirements for public participation could be made more suitable for international activities, and the circumstances permitting use of information from another environmental assessment process could be made more flexible.

2. **Develop a minimum federal involvement regulation**
   A minimum federal involvement regulation could set the level of Canadian participation that would be needed in an international project to trigger an environmental assessment. This could take the form of excluding projects on the basis of a funding threshold (or on the basis of a percentage of total funding) or, more simply, on the basis of whether the Canadian government participant has decision-making authority over the project.

3. **Amend provisions to provide greater flexibility in the use of other processes**
   The Act's provisions allowing for the use of information from other assessment processes have proven difficult to adapt for projects outside Canada. These provisions could be amended to provide greater flexibility to avoid duplication with the assessment process of another jurisdiction or international body. Criteria developed as a result of these provisions should be consistent with international standards and obligations.

4. **Develop a distinct exclusion list and inclusion list**
   A distinct exclusion list regulation could be developed for projects outside Canada to exclude those projects with minimal environmental effects. Similarly, a distinct inclusion list could also be developed for projects not currently captured by the Act but which have the potential for significant adverse impacts, such as projects related to forestry.

5. **Clarify language and definitions**
   Issues raised suggest the need for possible amendments to the Act and regulation to improve clarity and consistency of implementation. Certain sections should be reviewed to clarify their application, make the two international agreement-making powers consistent and consider assessment at levels other than screening or panel review.

7.6 The Discretionary Powers of the Minister of the Environment

The issues

Reviews by panels or mediators

To date, the Minister has not used the discretionary powers to refer a project to a panel or mediator. There are several important barriers to the use of these discretionary powers. For example, the discretionary powers that can be exercised within the confines of the wording may be perceived as an intrusion into provincial jurisdiction, where the federal government has no authority other than the Act to affect the decision on the project. As well, the wording prevents the Minister from acting if a federal

authority is involved. Finally, the choice for the Minister is limited to referral to a mediator or review panel, and does not include a less "drastic" option such as calling for a comprehensive study or screening.

Comprehensive studies

The Minister's decision-making role with respect to comprehensive studies is viewed by some to be problematic. On receipt of a comprehensive study for which the Agency has sought public comment, the Minister may refer the project to the responsible authority for action if the project is unlikely to cause significant adverse effects or if the project is likely to cause adverse effects that cannot be justified. In the former circumstance, the responsible authority may proceed with the project; in the latter, it may not. The Minister's only other option is to refer the project proposal to a panel review, which may be done if there is significant public concern, uncertainty about environmental effects or potentially significant effects.

The two areas for consideration are:

- the uncertainty for industry and provinces caused by the possibility of project referral to a panel review after a comprehensive study; and
- the Minister's limited decision-making options following receipt of a comprehensive study.

Many stakeholders, most notably in the industry sector, have indicated that a drawback of the comprehensive study process is that, despite best efforts by a proponent, a lengthy panel review or mediation process might follow the study process. Some have indicated they would prefer either a "go" or "no-go" decision, made in a timely manner, rather than being faced with the potential of the additional time and expense of a panel review. Some have indicated preference for an immediate, direct referral to a panel without the preliminary expenditure of time and resources needed to complete a comprehensive study.

Before the Minister receives a completed comprehensive study, the Agency will have worked with the responsible authority and any federal authorities to resolve outstanding issues raised in public comments. In some cases, the result will be a comprehensive study report which the departments and the proponent believe is sound and ready for approval, but which many stakeholders who commented on the report feel has not resolved their concerns. With respect to the Minister's decision following receipt of the comprehensive study, if the Minister is sympathetic to issues raised by the public, the options are limited: either the comprehensive study proposal is sent back to the responsible authority for action on the project or the project proposal becomes the subject of a panel review or mediation. The Minister does not have the authority to reject a comprehensive study report or impose conditions that would address outstanding issues, even though the Minister may view the existing option of referral to a panel review or mediation as unwarranted for the unresolved issues.

Options for consideration

The most appropriate role for the Minister of the Environment is a central question in an improved federal environmental assessment process. The following options could be considered.

1. **Modify the Minister's discretionary powers to allow more flexibility**

   Under s. 28 of the Act, the Minister can refer a project that could have significant environmental effects or where there is substantial public concern to a panel review or mediation for a more in-depth review of the potential effects of the project. However, there are times when it might be more appropriate for the project to be referred to a comprehensive study rather than a panel review. Specific criteria could be provided through guidelines to make such a determination in a more consistent way. For example, the environmental effects might not be so significant as to merit a panel review, but might be more significant than what is normally addressed in a screening. Similarly, public concerns might warrant a comprehensive study approach rather than a screening, but not be significant enough to warrant a full panel review or mediation. Adding an option for referral to comprehensive study to the Minister's discretionary powers would give the Minister the flexibil-

ity to determine which level of assessment would be more appropriate for a particular project.

2. **Modify the comprehensive study process to provide the Minister with more flexibility**
To help strengthen the quality of environmental assessments and remove some of the uncertainty associated with the comprehensive study process, modifications could be made to provide the Minister of the Environment with more flexibility in deciding next steps.

   A key question is when does the Minister determine that a project undergoing a comprehensive study is to be referred to a panel review. Under the current approach, this determination can be made at any time during the comprehensive study or following receipt of the study report. However, one option would be to allow the Minister to make this determination only during preparation of the comprehensive study. Beyond some appropriate point, such as the submission of the study report by the responsible authority, no referral to panel review could be made. This would remove the current uncertainty faced by the proponent, responsible authority and other participants that a project might have to undergo both a comprehensive study and a panel review. Under this approach, however, the Minister might require additional powers to ensure that quality comprehensive studies were still conducted and that issues raised during the process were dealt with adequately.

8. Improving the Quality of Environmental Assessments

Opportunities for addressing the quality of environmental assessments in an improved federal environmental assessment process are considered in four important areas:

- coverage of the Act;
- cumulative effects;
- follow-up; and
- monitoring.

8.1 Coverage of the Act

The issues

There have been ongoing questions about extending the coverage of the Act to include types of projects and groups currently excluded.

Land trigger

Several federal departments have identified a concern with respect to possible limitations of the Act's land trigger (s. 5(1)(c)). In some cases, a department may lease land to a third party to enable a project to be carried out. Under the current land trigger, the disposal of land initiates an environmental assessment. However, once the lease is issued, there is no requirement for an environmental assessment of subsequent projects carried out on the leased lands, even though the federal government remains the property owner (unless there is another trigger under the Act).

Crown corporations and port authorities

When the Act was originally developed and approved, Crown corporations and certain ports and harbour authorities were to be treated differently from federal departments, because of their need to operate in a competitive environment, competing with private sector firms. However, the Act includes a provision (s. 59(j)) for the establishment of a special regulation, or regulations, that would cover the conduct of assessments of the environmental effects of, and follow-up programs for, projects by Crown corporations.

In response to questions raised for several years by some organizations about the lack of environmental assessment regulations for Crown corporations, the Agency asked the multi-stakeholder Regulatory Advisory Committee to examine the missions and business goals of the various Crown corporations and their environmental assessment policies, and to propose recommendations for possible approaches to the establishment of environmental impact assessment regimes for the corporations, ports and harbours. The Committee analyzed environmental assessment regime options which might apply to Crown corporations. While no overall strategy was put forth for all Crown corporations, a port regulation was developed and approved.

Aboriginal lands

Aboriginal people also are concerned that the Act's transboundary provisions have not been applied, pointing out that projects that could affect reserve lands could proceed without any environmental assessment. The wording of the Act appears to prevent the Minister, in any situation where there is a federal authority involved, from applying s. 48, one of the transboundary environmental assessment provisions of the Act.

Under s. 10 of the Act, projects with a federal funding trigger that are proposed for reserve land are to be assessed under regulations developed under s. 59 (l). However, these regulations have not been developed, and there is no legislated requirement that federally funded projects on reserves undergo an environmental assessment. Efforts to develop the regulations have been unsuccessful, partly as a result of the diversity of Aboriginal viewpoints and governance issues among the over 630 First Nations. As an interim measure, a memorandum of understanding has been developed with 13 departments and agencies, to ensure they complete environmental assessments consistent with the Act, for projects they fund on reserves.

However challenging, the opportunity to further explore the need and potential successful approaches should not be neglected in the Five Year Review. The review provides an opportunity to hear from the First Nation constituency through its national and regional organizations. The opportunity for the federal government to advance self-government opportunities further to First Nations through such regulations would be a significant and positive achievement, providing First Nations accepted the initiative as a partnership of governments, and that the elements of the regulations were culturally appropriate.

An important consideration is the *First Nations Land Management Act* promulgated in 1999 whereby some self-governing First Nations will develop environmental assessment principles and procedures for their reserve lands. The Agency is assisting First Nations in the development of these new environmental assessment regimes, and this approach may be a practical alternative to s. 10 requirements under the Act.

Projects of national or international significance

Concerns have been expressed that some activities or projects with possible environmental implications (e.g., the export or import of particular technologies or substances) do not trigger an environmental assessment under the Act. Some groups have suggested that this gap be addressed through a new trigger in the Act, or by expanding the Act's Inclusion List or Law List to include additional categories of projects and activities that could be considered "projects of national or international significance."

Others have noted, however, that the Act (under ss. 46 to 48) does give the Minister discretion in ordering an environmental assessment panel review for a project when no other federal decision triggers the need for an assessment and the Minister believes the project may result in significant adverse environmental effects.

Options for consideration

The quality of environmental assessments can be improved by ensuring that coverage of the Act is fair and effective. The following options are worth considering.

1. **Amend the Act to include projects on federally owned, leased lands**
   The Act's land trigger could be amended to extend coverage to all projects on federally owned land leased by other parties, not only to the projects arising from the initial lease of the land. This would ensure that environmental effects of projects on federal lands would continue to be addressed by the leaseholders even in the absence of another federal trigger.

2. **Extend coverage of the Act to federal agencies, boards and Crown corporations**
   The development of regulations could proceed for appropriate Crown corporations, taking into account the unique circumstances of each corporation, including recognition of its competitive situation.

   This option would respond to a recommendation in the 1998 report of the Commissioner of the Environment and Sustainable Development which urged the Agency to accelerate its plans to develop regulations to include a broader range of federal activities under the Act.

3. **Resolve issues regarding the lack of environmental assessments for federally financed projects to be located on reserves**
   The Agency could continue to work with First Nations and their representative organizations to develop environmental assessment procedures for on-reserve projects receiving federal financial assistance. The goal would be an environmental assessment regime that considers the needs of federal government responsibilities in environmental assessment and its general responsibilities to Aboriginal people, and which respects First Nations' traditional ecological knowledge and culturally determined decision-making processes.

4. **Amend the Act to cover all federally funded projects on reserve lands**
   The coverage of the Act could be extended to all federally funded projects on reserve lands by removing the exemption that now exists under s. 10. As proposed under Option 3, the responsibility for conducting an assessment under the Act could be harmonized with the environmental assessment process of Aboriginal organizations when the latter have an appropriate environmental assessment regime in place.

8.2 Cumulative effects

The issues

Questions are often raised about the long-term changes that may occur not only from a single proposed activity or project, but from the combined effects on the environment from successive activities and projects. When considered from this perspective, the incremental effects may be significant, even though they may be insignificant when considered strictly on their own.

Every environmental assessment conducted under the Act must include a consideration of "any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out" (s. 16(1)(a)).

Scoping is a critical step in considering cumulative effects. If some environmental features are excluded from the assessment, certain cumulative effects may be overlooked. It also may be difficult in some assessments to get a comprehensive understanding of future projects. Some guidance may be required for responsible authorities on how to obtain information on proposed projects in the assessment study area. A general understanding of the various approval processes within other governments would also be valuable so responsible authorities can make a determination about the likelihood of future projects proceeding.

Consideration of cumulative effects raises important methodological issues such as how and when to conduct area-wide assessments. Under the current Act, environmental assessments are only triggered by project proposals. However, broader regional or area-wide reviews of development activity and proposals, within an ecosystem or geographic region, may be better able to address sustainable development in planning, make more efficient use of scientific expertise and local knowledge, and provide more consistent requirements for industry. In a recent assessment, for example, the proposal which triggered environmental assessment under the Act, followed several other similar projects in the area which had not triggered the federal process, and some of which had not required an assessment of cumulative effects. The perception in this instance was of an unequal burden of responsibility on the proponent of the final project.

There also is the important question of jurisdictional issues in cumulative effects. In identifying other actions that may cause an impact or in attempting to conduct area-wide assessments, there is potential for criticism that the federal government is infringing on provincial jurisdiction. Situations also may develop where federal projects are turned down because of cumulative effects while other projects contributing to the cumulative effects are allowed to proceed because they are not subject to legislation that incorporates the consideration of cumulative effects.

An additional concern is the availability of information on which to base an assessment of cumulative effects, and the question of who should be responsible for providing this information.

CUMULATIVE EFFECTS ASSESSMENT: LAND USE AND MINE DISCHARGES

In the case of a new open pit copper mine, a cumulative effects assessment examined the effects related to two major issues: land use and mine discharges. In addition to the federal environmental assessment, an assessment was required under a provincial environmental assessment process. Although the cumulative effects assessment was required only by the federal process, both parties agreed on the methodology to be used in the joint review.

The small "footprint" (land area occupied) of the mine simplified the task of scoping the assessment, particularly with regard to potential cumulative effects. Land use issues were limited to incremental losses of forest and habitat for fish and wildlife. The severity of effects was minimized by the small mine footprint and the use of an existing road and its right of way for locating most of the power and transportation infrastructure. The spread of air emissions was limited by the surrounding topography. The project's remote location and the limited spatial extent of effects also reduced the number of projects with the potential to interact with the mine. Two projects were identified that met the Act's definition for "other projects": a proposal to recover submerged timber from a nearby reservoir, and current and proposed land-based forestry activities.

Mine discharge was subject to regulated water quality levels, thereby substantially reducing the potential for downstream effects. The effective application of mitigation meant that cumulative effects were not considered significant and would not impact resource users. Similarly, the proposal to dredge or otherwise recover the timber submerged during the creation of the reservoir would only be approved if the impacts were manageable and would not impact resource users when considered along with the mine impacts. The extent of loss of forest, wildlife and wetland habitat due to the creation of the reservoir was not easily determined as historic baseline information was unavailable. Estimates ranged from 10,000 to 15,000 ha lost. With only a 575 ha footprint, the mine's contribution to regional losses was considered negligible, temporary and mitigable. A similar comparison to forestry activities also indicated that these effects in the watershed were not significant.

This CEA exercise demonstrated that a nearby large project can overshadow the cumulative effects contribution of a proposed but relatively smaller project; local mitigation may be sufficiently adequate to ameliorate cumulative effects; geography can limit the spatial boundaries.

Options for consideration

While good progress has been made on several fronts in providing sound advice to practitioners in this methodological area, other initiatives could be considered in the context of the Five Year Review.

1. **Provide clear definition in the Act**
   The Act could be amended to clarify the definition of "environmental effect" and other related terms and provide a definition of "cumulative effect," to facilitate scoping of assessments in which a cumulative environmental assessment is required.

2. **Promote greater co-ordination with other jurisdictions**
   The cross-jurisdictional aspects of addressing cumulative environmental effects, in particular, the need for early co-ordination of scoping efforts could be considered more directly in harmonization agreements and joint assessments. The possibility of jointly conducting regional environmental assessments in specific ecosystems or regions also could be considered as a policy approach.

3. **Provide guidance and training materials**
   A guideline could be developed to indicate who should be responsible for gathering cumulative effects information and at what level and scope. The guideline also could address the integration of regional assessment information into a project-specific cumulative effects assessment.

8.3 Follow-up

The issues

Effective follow-up is an essential component of an effective environmental assessment process. Under the Act, a follow-up program:

- verifies the accuracy of the environmental assessment; and/or
- determines the effectiveness of any mitigation measures that have been implemented.

In this way, follow-up can help improve the quality and effectiveness of environmental assessments, build in accountability and ensure that effective environmental protection measures are in place.

The Agency's Compliance Monitoring Review indicated that, in a sample of 77 screenings, about one half of the sample had a description of follow-up requirements. The review suggested that several important challenges remain to improving the quality of environmental assessments through effecting follow-up, including:

- *Application:* There is no consensus or guidance on the types of projects, among the approximately 6,000 environmental assessments conducted each year, requiring a follow-up program.
- *Management roles and responsibilities:* The question of how follow-up responsibilities outside its mandate can be assigned to a project proponent needs further exploration. As well, co-ordination among federal departments at the follow-up stage has not always been effective, and federal departments often lack the financial and human resources to conduct longer term, follow-up programs.
- *Content of follow-up programs:* The design, implementation and review of follow-up programs by departments and proponents have not been consistent. Knowledge gained from previous environmental assessments and follow-up programs has not been captured and shared effectively.
- *Permitting and enforcement:* Federal departments that do not have subsequent regulatory licensing or permitting responsibilities have expressed concern about the challenges associated with ensuring compliance with follow-up commitments contained in environmental assessments, particularly over the longer term.

The difficulties experienced with follow-up programs in terms of inconsistent application, federal co-ordination and compliance monitoring appear to arise from a general lack of regulations, guidelines, standards or procedures regarding the design and implementation of follow-up programs.

Options for consideration

In working toward improving the quality of environmental assessments, the capacity for follow-up after environmental assessments can be strengthened to promote continuous learning and public accountability throughout the process.

FOLLOW-UP AND MONITORING

As part of a larger master agreement following the review of a gold mining proposal, key institutional arrangements relating to follow-up were included. They provided commitments to mitigation measures and a framework to address First Nation concerns. The parties to the master agreement included several First Nations Councils, the project proponent and the governments of Canada and Ontario. The agreement sets out implementation mechanisms along with the necessary financial support to see implementation of follow-up commitments through to project completion. There is also a provision for an independent evaluation of the agreement's implementation.

In this direction, the following options could be considered.

1. **Develop guidelines or operational policies, and corresponding training to provide clearer direction to proponents and federal departments**
   A non-regulatory approach would have the Agency work with responsible authorities to develop guidelines and policies for improving follow-up. An operational policy or sectoral guidelines could clarify when and how departments should conduct follow-ups. It would establish common rules for all responsible authorities to follow, and would set a benchmark against which compliance could be evaluated by the Commissioner of the Environment and Sustainable Development.

   One of the Agency's roles is providing training and guidance to other federal departments on the Act, and to encourage and assist them in the preparation of their own training materials. A training program on follow-up, based on the developed guidelines or operational policies, could be introduced in co-operation with responsible authorities, sharing best practices for developing and carrying out follow-up programs.

2. **Strengthen the role of follow-up**
   The Act could be amended to strengthen requirements for follow-up to improve the quality of environmental assessments. For example, follow-up programs could be mandatory in all comprehensive studies and panel reviews. Responsible authorities could link follow-up requirements to the use of environmental management systems.

8.4 Monitoring compliance with the Act and the quality of assessments

The issues

Several participants in the process share responsibility for compliance with the Act. Departments assess the environmental consequences of their actions and take these consequences into account in their decisions. The Agency, meanwhile, ensures the consistency and quality of environmental assessments involving the federal government.

The 1998 Report of the Commissioner of the *Environment and Sustainable Development, Environmental Assessment – A Critical Tool for Sustainable Development*, noted several areas where environmental assessment needs to be improved, including:

- improving the quality of screening reports;
- taking a more consistent view of projects and the potential impacts to be assessed;
- gathering information on environmental assessment results; and
- monitoring the compliance and quality of environmental assessments.

In its response to the Commissioner's report, the Agency indicated it was leading efforts to develop a compliance-monitoring framework to provide information on whether environmental assessments are conducted in accordance with the Act and using good practices.

The Agency completed the Compliance Monitoring Framework in July 1998. It is based on standardized principles and approaches used to conduct reviews in the federal government, including program evaluation and comprehensive audits. It was designed to provide a comprehensive plan for addressing the issues of compliance with the Act, good environmental assessment practices and environmental assessment quality.

Options for consideration

The quality of environmental assessments could be improved by addressing opportunities for strengthening the role of monitoring in the overall process. Options worth considering include the following.

1. **Establish a quality assurance program across federal departments**
   A quality assurance program could be established across federal departments within the current structure of the Act to include an ongoing mechanism to monitor compliance with the Act and the overall quality of assessments. The Agency is already actively pursuing this option in consultation with all departments. A quality assurance program could include guidance and establish minimum mandatory standards for consistency on internal procedures and reporting requirements. In addition, it would assist departments in establishing performance indicators for environmental assessment that could be included in departmental sustainable development strategies or evaluation programs. It would also provide the Agency with the necessary information to develop appropriate training and guidance material, policies and regulations.

2. **Amend the Act to include a quality assurance mechanism**
   The Act could be amended to include a quality assurance mechanism to verify compliance and quality of assessments on an ongoing basis. Under such an amendment, responsible authorities would be required to participate in a quality assurance program co-ordinated by the Agency.

9. Strengthening Opportunities for Public Participation

Opportunities for strengthening public participation in a renewed federal environmental assessment process are considered in three key areas:

- public participation in environmental assessments;
- Aboriginal involvement in environmental assessments; and
- access to environmental assessment information.

9.1 Public Participation in Environmental Assessments

The issues

Screenings

Screenings, which account for over 99 percent of all environmental assessments conducted under the Act, do not require public involvement. Some groups have suggested this is not consistent with the spirit or intent of the Act; others suggest that most screenings are conducted on small-scale, routine projects with no environmental effects and no public interest.

Community and environmental groups have indicated general dissatisfaction with their experience in public participation in screenings, citing the lack of notification, the lack of time to prepare and insufficient opportunities to express their views. The situation has been made worse by the technical difficulties departments and the public have experienced with the Federal Environmental Assessment Index.

Comprehensive studies

In comprehensive studies, there have been questions about the scope and timing of opportunities for earlier, more substantive public participation and with the uncertain impact of public comments on project decisions.

Pressure is mounting from some groups to make participant funding more broadly available, particularly in comprehensive studies, given the types of projects that undergo a comprehensive study and the level of public concerns generated.

Panel reviews

Panel reviews under the Act are designed to be non-judicial and non-adversarial to encourage more open and informal public participation. There is the question whether some of the reviews conducted jointly with another jurisdiction or under another review process take on a more judicial nature and become more intimidating to prospective public participants.

Panel reviews are established to offer advice to government decision makers. The public may not always understand that the role of the review is advisory, rather than decision making, and expresses frustration if a government response to a panel report does not accept all the review recommendations.

The future of participant funding in panel reviews has received considerable attention. Members and chairs of public review panels consistently report that participant funding is an effective tool for involving groups affected by the proposed project in the review process. Public interest groups have called for the funding to be made available in comprehensive studies, as well. The Regulatory Advisory Committee also has identified opportunities for streamlining the funding request and approval procedures. However, resource constraints are an important factor in considering the future direction of the program.

There also is the broader question of encouraging the involvement of Aboriginal people in panel reviews. The question involves complex constitutional and cultural issues, and remains one of the most important challenges to the Act. Aboriginal people believe they should participate only in decision making rather than advisory processes.

INNOVATIVE PUBLIC INVOLVEMENT IN COMPREHENSIVE STUDIES

A recent comprehensive study of a road for a remote Aboriginal community involved extensive public consultation during the preparation of the study. When the study report was complete, the Agency held two public meetings and an open house to obtain in-person oral comments on the project, in addition to the written comments. The consultation process responded to a request from the community.

Mediation

Although no mediation has been conducted under the Act, it holds promise for enhancing public participation in the process and for reducing the costs and time demands of environmental assessments. There may be several barriers to its use.

First, mediation can only be used under the Act for project proposals in which there are likely to be significant effects or public concerns. Such projects tend to be relatively large, involving complex, controversial issues and polarized views. Finding agreement on such issues through mediation would likely be very difficult.

Second, the relatively strict conditions that must be met before mediation can begin have discouraged its use. For example, there must be agreement on the parties involved in the mediation and on the issues up for consideration.

Third, many projects which otherwise could benefit from mediation are also subject to provincial review. However, mediation does not appear to lend itself to joint federal-provincial reviews, given the need for each government to make its own decisions following an assessment.

Finally, some groups may have been reluctant to agree to mediation because the consequence of a failed mediation is referral to a panel review. Given this possibility, some participants in the process may prefer to avoid the extra time and uncertainty of mediation and move straight to the more familiar panel review.

Options for consideration

In seeking to strengthen opportunities for public participation in the environmental assessment process, a number of options could be considered.

1. **Enhance public participation in screenings**
   Under the current application of the Act, responsible authorities consult with the public on some, but not all, screenings, usually basing their decision to consult on the level of public concern. The base-line information requirement for all screenings could be mandatory public notification, using the Federal Environmental Assessment Index, which would provide basic project data only. The range of any additional public information needs and opportunities for consultation could be established through guidance materials, and could vary with the complexity of the screening.

   In addition, public participation in screenings could be enhanced by developing criteria for determining the types of project screenings that could benefit from public consultation. Criteria could be developed in guidelines, and be based on the severity of the biophysical and related social effects, the complexity of the project or the degree of public concern. The requirement for public consultation could be introduced through guidance materials and voluntary compliance, or made mandatory for certain projects through the development of a regulation under the existing authority in the Act. Depending on the level of participation deemed necessary, the level of public consultation could range from basic notification for a simple project, to meetings with key stakeholders for projects with clearly defined concerns, to a series of consultation activities involving the general public for projects with significant potential impacts.

2. **Enhance public participation in comprehensive studies**
   Public participation could be enhanced by adding a requirement for public meetings during the preparation of the comprehensive study report. Although not mandatory, most proponents have included public consultation during the preparation of their comprehensive study reports. Early public involvement is viewed as a key tool for identifying project concerns during the planning phase when modifications can more easily be made to the project proposal.

   An additional way to enhance public participation would be for the Agency to seek comments on the completed comprehensive study report in a more proactive way than only receiving written comments. For example, open houses, one-on-one information sessions, workshops or town-hall style meetings could be held in communities potentially affected by the project. This would enable public comments on the report to be

received more directly. Discussion at these meetings might produce suggestions for resolution or mitigation of issues the public still sees as outstanding. Discussion of the report in an open public forum could promote a better public understanding of the issues to be dealt with by the Minister and could provide the responsible authority with an opportunity to indicate how earlier public comments had been integrated into the report.

3. **Encourage the use of more informal mediation approaches**
   Procedures for conducting mediation under the Act could be amended to encourage greater use of this approach for resolving disputes. For example, the Act could be amended to allow mediation to occur under more informal circumstances during self-directed assessments. Mediation could be another tool available to the Minister of the Environment under a revised comprehensive study process. Another option could be amending the Act to give the Minister greater flexibility in choices following unsuccessful mediations, rather than referral to panel review.

4. **Reaffirm participant funding**
   Participant funding has been an effective tool for promoting meaningful public participation in panel reviews, but expansion of funding is affected by resource constraints. One option would be to solidify participant funding through cost recovery. This could open up the possibility of expanding participant funding to comprehensive studies.

5. **Take advantage of emerging technological opportunities**
   Panel reviews have relied on traditional means of communications – town hall meetings, press releases, public service announcements and public hearings. Advances in communication technologies make it easier and quicker to engage individuals and groups in discussions such as panel reviews. The Internet and videoconferencing have reduced the need for travel by allowing individuals and groups in remote locations to engage in consultation processes anywhere in the world. Wherever possible, emerging technologies should be used to engage citizens in panel reviews and reduce the need for expensive and often difficult travel. In seeking to take advantage of such changes, however, it will be important to consider the potential for some groups to be excluded from these new approaches.

9.2 The Involvement of Aboriginal People in Environmental Assessments

The issues

Involving Aboriginal people meaningfully in decision-making processes is one of the most challenging and complex issues facing government and Aboriginal groups in Canada. Environmental assessments conducted under the Act represent an important means of determining the implications of projects on Aboriginal people and their activities, and providing them with appropriate opportunities to be consulted. Aboriginal people in Canada have a unique role to play in many environmental assessments, in particular those involving reserve lands, traditional territories, and treaty and land management areas.

The Act contains no special provisions for consulting with Aboriginal people during environmental assessments. Several questions have been raised with respect to this important issue.

- *Separate approaches:* A number of Aboriginal groups have expressed strong dissatisfaction and frustration with the Act. This has led to several delays and legal challenges on specific projects. Aboriginal people have called for separate, distinct approaches to provide their views on the environmental impacts of specific projects and on the broader environmental agenda. They believe an approach based on partnership offers the greatest potential to involve Aboriginal people.

- *Consultation obligations:* Recent court decisions have led to higher expectations on the part of Aboriginal people with respect to when and how they should be consulted, particularly when Aboriginal lands or interests may be affected by a government decision.

- *The definition of "environmental effects":*

Aboriginal groups raise the issue of the Act's definition of "environmental effects" (including the effect of any change in the environment on the current use of lands and resources for traditional purposes) which does not adequately address the full range of issues of relevance to Aboriginal people. As well, they have expressed concerns that under the definition, Aboriginal issues, such as effects on socio-economic and cultural factors, can be considered only in an indirect way, if they are the result of direct changes in the bio-physical environment.

- *Application of the Act to Indian reserve lands:* The lack of Indian land regulations under s. 59(l) has meant that the Act has not been applied consistently to federal funding initiatives for projects on reserves. In the absence of Indian land regulations, funding authorities at Indian and Northern Affairs Canada, through their funding agreements, have required First Nations to conduct environmental assessments which generally have followed an environmental process similar to that of the Act. In addition, an interim memorandum of understanding among federal departments that fund projects on reserves has been developed. The memorandum has been in place since September 1999, ensuring the environmental assessment of federally funded projects on reserves.
- *Traditional ecological knowledge:* There is no consensus on the appropriate use of traditional ecological knowledge, acquired by Aboriginal persons over generations of experience with the environment, in environmental assessments conducted under the Act, nor on the relationship of this knowledge with conventional scientific analysis. The federal government tries to ensure the consideration of all available relevant knowledge in the environmental assessments it undertakes. One challenge associated with the inclusion of traditional ecological knowledge is the varied circumstance of each assessment. This, and the differing knowledge, understanding and values Aboriginal people may contribute in the assessment of the impacts of a particular project, make it difficult to provide uniform guidance on the factors of traditional ecological knowledge to be considered in specific environmental assessments. Current practice calls for specific guidance on using Aboriginal knowledge in project reviews to be provided by the panel on a case-by-case basis.

TRADITIONAL ECOLOGICAL KNOWLEDGE

Traditional ecological knowledge is an unwritten precept of behaving, doing and knowing, involving observations of, and interactions among, things such as people, plants, fish, animals, waterways and the land. Aboriginal people have acquired and practiced this knowledge for millennia as the foundation of their cultures. Traditional ecological knowledge is rooted in culture and lifestyles (e.g., the use of land by traditional resource users). This knowledge also refers to knowledge of the environment, of ecological systems and of cultural values.

The Agency has co-ordinated the first step in designing federal government policy on how traditional ecological knowledge could be integrated into environmental assessment. This has resulted in a report on a strategy for including this knowledge in guidelines. The next steps of designing traditional knowledge environmental assessment policy and determining how this knowledge can be brought into environmental assessment will be initiated in a process separate from the Five Year Review. The review expects, however, to hear from Aboriginal and non-Aboriginal stakeholders alike on the development of a basis for traditional ecological knowledge in federal environmental assessments, and to receive comments on the design of a traditional ecological knowledge policy.

Options for consideration

A major challenge is to find approaches for involving Aboriginal people in the environmental assessment process, on and off reserve, in an effective and meaningful way. Clearly, the Aboriginal peoples of Canada must have a pivotal role in the discussion of any environmental assessment agenda, particularly with regard to reserve lands, traditional territories and treaty areas. In seeking this objective, several options could be considered.

1. **Develop and apply more appropriate consultation methods**
   The government could continue to work with Aboriginal people and their representative organizations to develop and apply appropriate consultation methods both in project assessments and in the development of harmonized legislation and regulations.

2. **Harmonize the Act with Aboriginal self-government and land claim regimes**
   Work could continue on harmonizing the Act's process and concepts with the wide variety of Aboriginal self-government and land claim regimes wishing to establish linkage and co-operation with the federal process, to reflect and support Aboriginal interests.

3. **Continue the discussion of traditional ecological knowledge with respect to its role in environmental assessment**
   The Agency recognizes the importance and challenge of considering traditional ecological knowledge in environmental assessment and is elaborating ways to best incorporate consideration of this knowledge in the federal environmental assessment process. Federal guidelines being developed with the help of Aboriginal groups and individuals will address the basic obligations and options for project proponents, including the consideration of traditional ecological knowledge in the panel review process.

9.3 Access to Environmental Assessment Information

The issues

Public registries

An independent review of public registry operations in early 1999 concluded that while all departments appeared to be complying with the obligation to establish a public registry for each environmental assessment, the operations of the registries vary widely. Some departments maintain sophisticated centralized data bases; others simply keep project files and prepare a document list on request.

Most responsible authorities have relied on their presence on the Federal Environmental Assessment Index to meet their obligations for providing public access to environmental assessment information. Most also have tended to store the documents in the project regions, and many are prepared to provide documents in electronic format. A few departments have taken more proactive measures to promoting public awareness of their registries, and to providing convenient access such as establishing reading rooms in the project region.

PUBLIC USE OF PUBLIC REGISTRIES

Very few departments maintain statistics on the extent of public use of their registries. All the departments surveyed in a recent independent study indicated that their public registries receive very little public use.

For example, the highest number of public requests reported from any department was 40 requests since the Act came into force. Other departments reported public use of fewer than six requests a year, and one reported that it had never received a request. Even those departments conducting hundreds of environmental assessments a year reported only one or two public requests a year through their registries. Whether this is because of lack of public interest, lack of awareness, or lack of ability to access the registries is not clear.

Federal Environmental Assessment Index

In the past, the operations of the Index have been hindered by technical problems and design changes that led to difficulties and delays in the transfer of data from federal departments. As a result, a number of departments decided not to use the voluntary index, and several developed their own indices for posting environmental assessment information on their departmental Web sites. As well, public groups and others expressed concern that the Index was not providing sufficient or timely information to promote public participation in environmental assessments. The 1998 *Report of the Commissioner of the Environment and Sustainable Development*, for example, highlighted the need for better information in the Index and improved public access to this information.

The Agency is addressing these technical difficulties in an effort to improve the Index. Technical improvements allow for the better transfer of data on environmental assessments from departments, and all federal departments conducting environmental assessments now regularly transfer data to the Index. The Agency also is evaluating opportunities to place more detailed information on environmental assessments on the Index.

Beyond the technical issues, challenges remain in promoting public awareness of departmental registries and the Index, and providing effective training and guidance to departments on operating registries and using the Index.

Options for consideration

A strengthened public registry/Index system can help ensure that the public has the information needed – when needed – to participate meaningfully in environmental assessments. For example, the following options could be considered.

1. **Amend the Act to include a mandatory Index requirement for responsible authorities.**
   A fully operational Index, used in a timely way by responsible authorities, could be an important tool to the public and to other government jurisdictions for obtaining information about the presence and status of projects undergoing environmental assessment.

2. **Make screening reports accessible through the Internet**
   Screening support documents, such as a scoping document, could be made accessible through the Internet as early as possible, to facilitate public input. The final screening reports could be either posted on the responsible authority's own Internet site or submitted to the Agency for posting through the Index.

3. **Explore the potential for new information and communication technology**
   The potential for new information and communication technology to improve the reliability and accessibility of the Index and to better involve individuals and organizations in the environmental assessment process could be examined. Internet and telecommunications are revolutionizing the way communication is performed. High-speed data exchange, along with video and teleconferencing, are more economical and accessible than before, opening up new avenues for public involvement. In seeking to take advantage of such changes, however, it will be important to consider the potential for some groups to be excluded.

10. Looking Ahead: Simplicity, Quality and Integrity

Looking back, this discussion paper has tried to present a fair, objective and comprehensive review of the experience to date with the *Canadian Environmental Assessment Act.*

Looking ahead, the paper has identified a number of areas where there are challenges and opportunities to renew the Act.

The ideas presented here seek to contribute to a national dialogue on where federal environmental assessment should be headed in Canada. The Five Year Review provides a forum for bringing together all those concerned with environmental assessment in Canada to review the strengths and limitations of the Act in an atmosphere of co-operation and common mission, and to revitalize the Act so it remains a dynamic and effective tool for decision makers.

Others involved in the process – from other governments to industries to community groups – will have other issues and ideas to bring to the discussion, and these will be welcomed.

The dialogue is certain to be thought-provoking and challenging. Environmental assessment touches many segments of our society, and it is not surprising when these different perspectives often bring widely different – and even conflicting – visions of what changes are needed to the process. These differences should not be discouraged. Indeed, the opportunity to voice them and to debate them in an atmosphere of mutual respect is a hallmark of Canadian society.

What kind of federal environmental assessment process do Canadians need and want in the new millennium?

If there is a single thread weaving together the many different perspectives on the recent experience with the Act, it is this: the Act, as it stands, appears to be unnecessarily complex. Its complexity triggers ambiguity and a lack of clarity that touches on so many aspects of the federal environmental assessment process – relationships, responsibilities, predictability, consistency, timeliness, accountability and public participation.

If the fundamental issue of complexity is not addressed, there is the risk of a double loss: in the quality of the assessments themselves and, just as serious, in confidence on all sides in the integrity of the process.

A less ambiguous, more straightforward process could go a long way in promoting public confidence in the process, providing a greater measure of certainty and predictability to the private sector, and ensuring a more appropriate use of scarce resources by the public sector.

QUESTIONS TO CONSIDER IN THE FIVE YEAR REVIEW

This discussion paper has presented a wide range of ideas and suggestions to stimulate dialogue. Individuals and groups wanting to participate in the Five Year Review are encouraged to consider the following questions.

- Are there additional issues that should be addressed in the Five Year Review?
- Are there other challenges that should be put on the table for discussion?
- Are there additional options that should be considered?
- To what extent can or should important environmental assessment methodological issues such as scoping be addressed through legislation?
- What is the appropriate balance or trade-off among some of the proposed options? For example, how can the need to strengthen the role of the Minister be balanced with the principle of self-assessment or the need for greater predictability and timeliness with the need for improved opportunities for public participation?

The three major challenges presented in this discussion paper all speak to the need to bring greater clarity and understandability to the federal environmental assessment process while improving the quality of assessments and confidence in – and respect for – the process. For example:

- Efforts to simplify and clarify the relationships between different federal departments and different governments can result in less overlap and duplication, and ensure that projects likely to have significant effects are given proper attention.
- A focus on greater predictability and consistency in the process can reduce the need to resort to litigation and help ensure that all participants have greater confidence in the process and its decisions.
- Clearer lines of responsibility and accountability can build greater confidence in the quality of environmental assessments and in the quality of decisions being made on projects.
- Clear, consistent opportunities for meaningful public involvement can be a powerful tool for improving quality while reducing the need to resort to litigation.

Simplicity, quality, integrity: This is the vision for a revitalized federal environmental assessment process. Achieving the vision will not be easy. It will not only be a matter of rewriting particular provisions of the federal legislation. It also must be based on a renewed commitment to co-operation and co-ordination within and across all jurisdictions, on changes in internal procedures by federal departments to better realize the potential of environmental assessment to contribute to sound planning decisions and on the gradual expansion of expertise and capacity among environmental assessment practitioners in Canada through better training and education.

For More Information on the Five Year Review of the Act:

Jim Clarke
Director, Legislative and Regulatory Affairs
14th Floor, Fontaine Building
200 Sacré-Coeur Boulevard
Hull, Québec K1A 0H3
Telephone (Collect): (819) 997-2253
E-mail: jim.clarke@ceaa.gc.ca

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